

Senator from New Hampshire [Mr. HUMPHREY], the Senator from Louisiana [Mr. JOHNSTON], the Senator from South Dakota [Mr. PRESSLER], the Senator from Delaware [Mr. ROTH], the Senator from Alaska [Mr. STEVENS], the Senator from South Carolina [Mr. THURMOND], the Senator from Virginia [Mr. WARNER], the Senator from Missouri [Mr. BOND], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of Senate Joint Resolution 164, a joint resolution designating 1990 as the "International Year of Bible Reading."

## SENATE JOINT RESOLUTION 175

At the request of Mr. D'AMATO, the names of the Senator from Kansas [Mrs. KASSENBAUM], the Senator from Colorado [Mr. ARMSTRONG], the Senator from Rhode Island [Mr. PELL], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Wyoming [Mr. SIMPSON], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 175, a joint resolution designating the week beginning September 17, 1989, as "Emergency Medical Services Week."

## SENATE JOINT RESOLUTION 176

At the request of Mr. D'AMATO, the names of the Senator from New York [Mr. MOYNIHAN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Utah [Mr. GARN], the Senator from Virginia [Mr. ROBB], the Senator from Hawaii [Mr. INUYE], and the Senator from Hawaii [Mr. MATSUNAGA] were added as cosponsors of Senate Joint Resolution 176, a joint resolution to designate September 29, 1989, as "National Siblings of Disabled Persons Day."

## SENATE JOINT RESOLUTION 182

At the request of Mr. DOLE, the names of the Senator from Connecticut [Mr. DODD], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Virginia [Mr. ROBB], the Senator from North Carolina [Mr. SANFORD], and the Senator from Texas [Mr. BENTSEN] were added as cosponsors of Senate Joint Resolution 182, a joint resolution to commemorate the 50th anniversary of Little League Baseball.

## SENATE JOINT RESOLUTION 188

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Joint Resolution 188, a joint resolution designating the week of October 23, 1989, through October 29, 1989, as "Eating Disorders Awareness Week."

## SENATE JOINT RESOLUTION 194

At the request of Mr. LAUTENBERG, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of Senate Joint Resolution 194, a joint resolution designating November 12-18, 1989, as "National Glaucoma Awareness Week."

## AMENDMENT NO. 698

At the request of Mr. WILSON, the names of the Senator from Kansas

[Mrs. KASSENBAUM] and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of amendment No. 698 proposed to H.R. 3014, a bill making appropriations for the legislative branch for the fiscal year ending September 30, 1990, and for other purposes.

## AMENDMENT NO. 709

At the request of Mr. HATCH, the names of the Senator from Nebraska [Mr. KERREY], the Senator from Arizona [Mr. MCCAIN], the Senator from Kentucky [Mr. McCONNELL], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of amendment No. 709 proposed to S. 933, a bill to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

## SENATE CONCURRENT RESOLUTION 68—AUTHORIZING A CONCERT ON THE CAPITOL GROUNDS

Mrs. KASSEBAUM (for herself, Mr. PELL, Mr. BIDEN, Mr. SARBANES, Mr. KERRY, Mr. SIMON, Mr. SANFORD, Mr. MOYNIHAN, Mr. LUGAR, Mr. BOSCHWITZ, Mr. MURKOWSKI, and Mr. MACK) submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration:

## S. CON. RES. 68

*Resolved by the Senate (the House of Representatives concurring), That the National Park Service shall be permitted to sponsor a concert by the American Soviet Youth Orchestra on the Capitol grounds on Tuesday, August 28, 1990, such concert to be free to the public and arranged not to interfere with the needs of Congress, under conditions to be provided by the Architect of the Capitol.*

● Mrs. KASSEBAUM. Mr. President, the American Soviet Youth Orchestra performed brilliantly last summer at the Kennedy Center under the direction of Zubin Mehta. It was a moving and unforgettable evening not only for these fine young musicians from the United States and the Soviet Union but also for the audience.

The nationwide competition for the 1990 American Soviet Youth Orchestra is in its final stages. In July 1990, the 50 United States winners will join with their 50 Soviet counterparts in rehearsals at the Moscow State Conservatory, to be followed by the Moscow performance and a tour of the Soviet Union and five cities in Europe. The orchestra will then travel to the United States where plans call for a performance on the Capitol grounds and public concerts in major U.S. cities.

In this country, the Oberlin College Conservatory of Music is sponsoring the orchestra, and in the Soviet Union the sponsors are the Ministry of Culture and the Moscow State Conservatory. First Lady Mrs. George Bush is the American honorary chairman. Mrs. Raisa Gorbachev has recently been invited to be the Soviet honorary chairman.

The orchestra needs the permission of Congress to perform on the Capitol grounds. The enclosed concurrent resolution simply provides that permission and does not have funding as an objective. The orchestra is supported primarily by donations from individuals, corporations, and foundations.

Senator CLAIBORNE PELL, chairman of the Committee on Foreign Relations, and I are pleased to submit this concurrent resolution. We would like to thank our colleagues on the committee who are cosponsoring the concurrent resolution. ●

## SENATE RESOLUTION 174 COMMENDING THE CREW OF UNITED FLIGHT 232 AND PERSONNEL FROM THE FEDERAL AVIATION ADMINISTRATION

Mr. DOLE (for himself, Mr. MITCHELL, Mr. HOLLINGS, Mr. DANFORTH, Mr. FORD, Mr. MCCAIN, Mr. GORTON, Mr. GRASSLEY, Mr. HARKIN, Mr. HUMPHREY, Mr. KASTEN, Mr. ARMSTRONG, Mr. COATS, Mr. HATCH, Mr. PACKWOOD, and Mr. WALLOP) submitted the following resolution; which was considered and agreed to:

## S. RES. 174

Whereas, on July 19, 1989, the lives of 184 people on board United Flight 232 were saved, in large part, because of the heroic actions of the crew;

Whereas, the flight's cockpit crew, Captain Alfred Haynes, First Officer William Records, Second Officer Dudley Dvorak and Flight Instructor Dennis Fitch, performed with poise and courage in communicating with Sioux City, Iowa, airport personnel and in attempting a difficult emergency landing at the airport;

Whereas, the flight's cabin crew, Janice T. Brown, Georgeann Delcastillo, Barbara Gillaspie, Rene Louise LeBeau, Donna McGrady, Virginia J. Murray, Timothy Owens, Kathy Yeung Shen and Susan White, performed with poise and courage in advising passengers prior to the crash and then assisting them in exiting the aircraft;

Whereas, Federal Aviation Administration (FAA) Air Traffic Control personnel, William K. Bachman and Mark W. Zielesinski, and FAA Airway Facilities personnel, Samuel N. Gochenour, Timothy Norton and Randy Youngberg, performed with poise and courage in assisting United Airlines Flight 232 make an emergency landing at Sioux City, Iowa; Now, therefore, be it

*Resolved*, That the United States wishes to commend the crew members of the United flight 232 and the Federal Aviation Administration personnel involved with United flight 232 for their exemplary efforts on behalf of the passengers of that flight.

## AMENDMENTS SUBMITTED

## AMERICANS WITH DISABILITIES ACT

## HARKIN AMENDMENTS NOS. 711 AND 712

Mr. HARKIN proposed two amendments to the bill (S. 933) to establish a

clear and comprehensive prohibition of discrimination on the basis of disability, as follows:

**AMENDMENT No. 711**

On page 92, line 18, insert a comma after "agent".

**AMENDMENT No. 712**

On page 86, line 22, strike "2" and insert "3".

**BOSCHWITZ AMENDMENT NO. 713**

Mr. BOSCHWITZ proposed an amendment to the bill S. 933, supra, as follows:

On page 84, between lines 7 and 8, insert the following new paragraph:

(3) **JUDICIAL CONSIDERATION.**—In a civil action under paragraph (1), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity.

**HOLLINGS (AND CHAFEE) AMENDMENT NO. 714**

Mr. HOLLINGS (for himself and Mr. CHAFEE) proposed an amendment to the bill S. 933, supra, as follows:

(1) Amend section 304(b)(4) by inserting "except as provided in section 305(d)," immediately after "other providers,"; by striking "6 years" and inserting in lieu thereof "7 years"; and by striking "5 years" and inserting in lieu thereof "6 years".

(2) Amend section 305(a) by striking "Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792)" and inserting in lieu thereof "Office of Technology Assessment".

(3) Amend section 305(c) to read as follows:

"(c) **ADVISORY COMMITTEE.**—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

"(1) members selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers;

"(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

"(3) members selected for their technical expertise on issues included in the study.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3)."

(4) Amend section 305(d) by striking "Board," and all that follows and inserting in lieu thereof "Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and the Congress within 36 months after the date of enactment of this Act. If the President, after reviewing the study, determines that compliance with the requirements of section 304(a) on or before the applicable deadlines specified in section 304(b)(4) will result in a significant reduction in intercity bus service, each such deadline shall be extended by one additional year."

(5) Amend section 305 by adding at the end the following new subsection:

"(e) **REVIEW.**—In developing the study required by subsection (a), the Office of Tech-

nology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d)."

**HELMS AMENDMENT NO. 715**

Mr. HELMS proposed an amendment, which was subsequently modified, to the bill S. 933, supra, as follows:

At the appropriate place in title I, insert the following new section:

**SEC. . AMENDMENTS TO THE REHABILITATION ACT.**

(a) **HANDICAPPED INDIVIDUAL.**—Section 7(7)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking out "Subject to the second sentence of this subparagraph, the" and inserting in lieu thereof "The"; and

(2) by striking out the second sentence and inserting in lieu thereof the following: "Notwithstanding any other provision of law, but subject to subsection (C) with respect to programs and activities providing education and the last sentence of this paragraph, the term 'individual with a handicap' does not include any individual who currently uses illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if such individual also uses or is also addicted to drugs. For purposes of programs and activities providing medical services, an individual who currently uses illegal drugs shall not be denied the benefits of such programs or activities on the basis of his or her current use of illegal drugs if he or she is otherwise entitled to such services.

(C) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently uses drugs or alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions."

(D) For purposes of sections 503 and 504 of this Act as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others."

(b) Section 7 of such Act (29 U.S.C. 706) is further amended by adding at the end thereof the following new paragraph:

"(22) The term 'illegal drugs' means controlled substances, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term 'illegal drugs' does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the Controlled Substances Act or other provisions of federal law."

**HELMS AMENDMENT NO. 716**

Mr. HELMS proposed an amendment to the bill S. 933, supra, as follows:

At the appropriate place in the bill, add the following:

"For the purposes of this Act, the term 'disabled' or 'disability' shall not apply to an individual solely because that individual is a transvestite."

**HARKIN AMENDMENTS NOS. 717 AND 718**

Mr. HARKIN proposed two amendments to the bill S. 933, supra, as follows:

**AMENDMENT No. 717**

Page 92, line 24, strike "or" before "observing", and add "or administering" after "observing".

Page 93, lines 3-4: Strike lines 3-4 and insert the following:

"(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance."

"Provided that paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purposes of title I and III.

**AMENDMENT No. 718**

On page 50, strike line 21 and all that follows through page 51, line 21.

On page 51, line 22, strike "(d)" and insert "(c)".

On page 52, between lines 9 and 10, insert the following new section:

**SEC. 104. ILLEGAL DRUGS AND ALCOHOL.**

(a) **QUALIFIED INDIVIDUAL WITH A DISABILITY.**—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is a current user of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protection of this Act if such individual also uses or is also addicted to drugs.

(b) **AUTHORITY OF COVERED ENTITY.**—A covered entity—

(1) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or illegal drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace of 1988 (41 U.S.C. 701 et seq.) and that transportation employees meet requirements established by the Secretary of Transportation with respect to drugs and alcohol; and

(4) may hold an employee who is a drug user or alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(c) **DRUG TESTING.**—

(1) **IN GENERAL.**—For purposes of this title, a test to determine the use of illegal drugs shall not be considered a medical examination.

(2) **CONSTRUCTION.**—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing of job applicants or employees or making employment decisions based on such test results.

On page 52, line 10, strike "104" and insert "105".

On page 52, line 17, strike "105" and insert "108".  
 On page 52, line 22, strike "106" and insert "107".  
 On page 53, line 4, strike "105" and insert "108".  
 On page 53, line 6, strike "107" and insert "108".  
 On page 93, line 20, strike "106" and insert "107".

#### DOLE (AND OTHERS) AMENDMENT NO. 719

Mr. DOLE (for himself, Mr. DOMENICI, and Mr. GRASSLEY) proposed an amendment to the bill S. 933, supra, as follows:

On page 95, strike lines 4 through 14 and insert the following new subsections:

##### (a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of Federal Communications Commission, shall develop a plan to assist entities covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General is authorized to obtain the assistance of the other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

##### (c) IMPLEMENTATION.—

(1) AUTHORITY TO CONTRACT.—Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

##### (2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance, as described in subsection (a), for title I.

##### (B) TITLE II.—

(1) IN GENERAL.—Except as provided for in clause (ii), the Attorney General shall implement such plan for assistance for title II.

(ii) EXCEPTION.—The Secretary of Transportation shall implement such plan for assistance for section 203.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III.

(D) TITLE IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

##### (d) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions and groups or asso-

ciations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) DISSEMINATION OF INFORMATION.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(c) FAILURE TO RECEIVE ASSISTANCE.—An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of this Act because of any failure to receive technical assistance under this section.

#### GRASSLEY (AND OTHERS) AMENDMENT NO. 720

Mr. GRASSLEY (for himself, Mr. DOLE, Mr. SPECTER, Mr. HUMPHREY, and Mr. NUNN) proposed an amendment to the bill S. 933, supra, as follows:

At the appropriate place add the following:

Notwithstanding any other provision of this Act or of Law, the provisions of this Act shall apply in their entirety to the Senate, the House of Representatives, and all the instrumentalities of the Congress, or either House thereof.

#### HUMPHREY AMENDMENT NO. 721

Mr. HUMPHREY proposed an amendment to the bill S. 933, supra, as follows:

At the end of the bill, add the following:  
 For purposes of this Act, an individual with a "disability" shall not include any individual who uses illegal drugs, but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs.

However, for purposes of covered entities providing medical services, an individual who uses illegal drugs shall not be denied the benefits of such services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

#### ARMSTRONG (AND HATCH) AMENDMENT NO. 722

Mr. ARMSTRONG (for himself and Mr. HATCH) proposed an amendment to the bill S. 933, supra, as follows:

At the end of the bill, add the following:  
 Under this act the term "disability" does not include "homosexuality," "bisexuality," "transvestism," "pedophilia," "transsexualism," "exhibitionism," "voyeurism," "compulsive gambling," "kleptomania," or "pyromania," "gender identity disorders," current "psychoactive substance use disorders," current "psychoactive substance-induced organic mental disorders," as defined by DSM-III-R which are not the result of medical treatment, or other sexual behavior disorders."

#### DOLE AMENDMENT NO. 723

Mr. DOLE proposed an amendment to the bill S. 933, supra, as follows:

At the appropriate place, insert the following new section:

#### SEC. . EXPENSING OF CERTAIN CAPITAL EXPENDITURES TO ASSIST DISABLED.

(a) ADDITIONAL ITEMS ELIGIBLE FOR EXPENSING.—Section 196(b) of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ITEMS INCLUDED.—The term 'qualified architectural and transportation barrier removal expense' shall include any of the following expenses in connection with a trade or business which are chargeable to capital account:

"(A) Expenses for auxiliary aids and services (as defined in section 3(1) of the Americans With Disabilities Act of 1989).

"(B) Expenses in connection with providing reasonable accommodations (as defined in section 3(8) of such Act) to individuals with disabilities."

(b) DECREASE IN MAXIMUM AMOUNT WHICH MAY BE EXPENDED.—Section 190(c) of the Internal Revenue Code of 1986 is amended by striking "\$35,000" and inserting "\$25,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

#### HARKIN AMENDMENT NO. 724

Mr. HARKIN proposed an amendment to the bill S. 933, supra, as follows:

At the appropriate place insert the following:

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

#### LIMITATIONS OF CIVIL CONTEMPT SENTENCES IN THE DISTRICT OF COLUMBIA

#### SASSER (AND HATCH) AMENDMENT NO. 725

Mr. MITCHELL (for Mr. SASSER, for himself and Mr. HATCH) proposed an amendment to the bill (S. 1163) to amend the D.C. Code to limit the length of time for which an individual may be incarcerated for civil contempt in a child custody case in the Superior Court of the District of Columbia and to provide for expedited appeal procedures to the D.C. Court of Appeals for individuals found in civil contempt in such a case, as follows:

On page 2, line 15, after "11-1101(1)" insert "and (4)".

#### LEVIN AMENDMENT NO. 726

Mr. MITCHELL (for Mr. LEVIN) proposed an amendment to the bill S. 1163, supra, as follows:

At the end of the bill, add the following:  
 SEC. 4. APPLICABILITY OF AMENDMENTS AND REPORT.

(a) APPLICABILITY.—The amendments made by this Act shall cease to apply on the date that is 18 months after the date of enactment except that such amendments shall apply to any person incarcerated for civil contempt in a child custody case on or before the date that the amendment ceases to be in effect.

does not go far enough to adequately protect public health.

EBDC is the most widely used fungicide in the world. Approximately one-third of all our fruits and vegetables are treated with the chemical. The threat of EBDC first came to light as far back as 1970. Despite recommendations from EPA staff in 1971 that EBDC be banned, the Government delayed taking any action on the pesticide.

Like Rip Van Winkle, our Government has slept for two decades, taking no action on EBDC. The EPA received the latest data demonstrating the health risk of EBDC from the National Toxicology Program in late August of this year. I know from personal knowledge that EPA has data showing a significantly higher risk associated with EBDC than previously estimated by the agency. EPA should go beyond the industry's voluntary actions and take stronger steps to insure that our food supply is safe.

EPA's data shows that EBDC is more dangerous, in fact, than Alar. And, like Alar, EBDC should be off the market if it is harmful to our health. EBDC fungicides concentrate in processed foods as ETU, which can cause cancer.

The industry suspension does not apply to EBDC use on such important crops as: bananas, cranberries, grapes, onions, almonds, asparagus, peanuts, potatoes, corn, wheat, and tomatoes.

A number of these crops pose a significant threat to human health when EBDC is used on them. But the worst risk comes from tomatoes. Fresh tomatoes pose a substantial risk, and the danger of processed tomatoes is even higher. This risk is particularly troubling because of the large numbers of tomatoes consumed by Americans every year. Children face greater risks from pesticides because they eat more fruits and vegetables per pound of body weight, and with their bodies still developing therefore, the effect of the chemicals is more toxic on them.

The Natural Resources Defense Council estimates that half the risk from EBDC's harmful agent to preschoolers comes from processed tomatoes. The pizza, ravioli, and spaghetti are part of the regular menu items in school cafeterias across this country. According to a 1987 National Academy of Sciences study, "under EPA's worst-case assumptions the estimated dietary oncogenic-cancer-risk from tomato products may be 15 percent of the total dietary oncogenic risk from pesticide residues."

One study showed there was a risk of 7 in 10,000; that is to say, 7 of 10,000 people consuming a normal diet of fruits and vegetables would get cancer as a result of the use of this fungicide.

The amount of this chemical that remains on the market represents twenty times the level that the EPA considers as safe. Therefore, I believe strongly that EPA should promptly step in where industry fears to tread.

Mr. President, I urge my colleagues to join with me in seeking effective and speedy action by the Environmental Protection Agency to eliminate the health risk of this fungicide, EBDC, on the foods most Americans love to eat.

#### TWO OF NEVADA'S MOST EXEMPLARY YOUTHS

Mr. REID. Mr. President, I rise today to salute two of Nevada's most exemplary youths, Chris O'Brien and Eddie Brooks. Their selfless compassion and extraordinary bravery helped save the lives of two California accident victims.

O'Brien and Brooks, both students at Gorman, were participating in a baseball tournament in Union City, CA, over the July Fourth weekend. On their return from a nearby 7-Eleven, the boys heard loud noises, initially dismissed as fireworks. Upon closer inspection, they found the wreckage of a 1987 Corvette, which plummeted over 40 feet into a ravine. The boys quickly descended the steep hill, hoping to find the victims alive.

"When we got to the bottom of the hill and saw what happened, I thought to myself, 'here we go—this is what we've got to do,'" Brooks said.

While Brooks applied medical procedures he learned from his father, O'Brien spoke to the other victim, seeking to soothe her nerves. Once the victim regained composure, O'Brien sought help, bringing rescue workers to the remote area.

Chris O'Brien and Eddie Brooks are modern heroes in every sense of the word. Thanks to their quick thinking and grace under pressure, the victims escaped an otherwise life-threatening situation. I am proud of their heroic rescue, and applaud their exemplary behavior. They are truly an asset to their State and to the entire country.

Izzy Marion, the boys' coach, heartily applauds their efforts. "It was like fate that they came along and knew enough to take care of the people. That shows a lot of good upbringing in their families. We're very proud."

We are all proud of Chris and Eddie and the example of courage they showed at a moment's notice.

I close by urging my colleagues to join me in acknowledging two real-life heroes, Chris O'Brien and Eddie Brooks.

#### DR. TIRSO DEL JUNCO

Mr. REID. Mr. President, I rise today to pay tribute to an outstanding individual, Dr. Tirso del Junco. On October 20, the Hispanic Business and Professional Women's Club of Las Vegas will honor Dr. del Junco as the "1989 Hispanic Man of the Year."

Dr. del Junco's outstanding accomplishments document a long history of service and dedication. Dr. del Junco came to the United States from Cuba in 1949, already armed with his medi-

cal degree. Thanks to his compassion and professionalism, he soon became a respected member of the medical community and established a very successful practice. Del Junco also enjoys continued success as an entrepreneur, making great contributions to the business community.

Dr. del Junco is involved in numerous civic organizations, including Hollywood Park Charities, Inc., where he currently serves as president. The Salesian Boys Club is also honored to have del Junco serve on the board of directors. All of these accomplishments are testament to Dr. del Junco's selfless compassion.

Despite his accomplishments in the United States, Dr. del Junco has not forgotten his Cuban roots. In 1961, del Junco joined the Cuban Army of Liberation as a medical officer in the ill-fated Bay of Pigs. Undeterred by the mission's failure, del Junco continues to fight communism at every turn. He was, in fact, one of the guiding forces behind the creation of Radio Marti. His invaluable service is a benefit to us all.

Dr. Tirso del Junco is an outstanding choice for the "1989 Hispanic Man of the Year." It is my honor to pay tribute to this exemplary individual, a man very worthy of this high award. I'm sure my distinguished colleagues join me in heartfelt thanks.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is now closed.

#### AMERICANS WITH DISABILITIES ACT

The ACTING PRESIDENT pro tempore. The hour of 10 a.m. having arrived, the Senate will now proceed to the consideration of S. 933 under the previous order. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

The Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Human Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) *TABLE OF CONTENTS.*—The table of contents is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

#### TITLE I—EMPLOYMENT

- Sec. 101. Definitions.
- Sec. 102. Discrimination.
- Sec. 103. Defenses.
- Sec. 104. Posting notices.
- Sec. 105. Regulations.
- Sec. 106. Enforcement.

Sec. 107. Effective date.

#### TITLE II—PUBLIC SERVICES

Sec. 201. Definition.

Sec. 202. Discrimination.

Sec. 203. Actions applicable to public transportation provided by public entities considered discriminatory.

Sec. 204. Regulations.

Sec. 205. Enforcement.

Sec. 206. Effective date.

#### TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Sec. 301. Definitions.

Sec. 302. Prohibition of discrimination by public accommodations.

Sec. 303. New construction in public accommodations and potential places of employment.

Sec. 304. Prohibition of discrimination in public transportation services provided by private entities.

Sec. 305. Study.

Sec. 306. Regulations.

Sec. 307. Exemption for private clubs and religious organizations.

Sec. 308. Enforcement.

Sec. 309. Effective date.

#### TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.

#### TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Construction.

Sec. 502. Prohibition against retaliation and coercion.

Sec. 503. State immunity.

Sec. 504. Regulations by the architectural and transportation barriers compliance board.

Sec. 505. Attorney's fees.

Sec. 506. Technical assistance.

#### SEC. 2. FINDINGS AND PURPOSES

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior

status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

#### SEC. 3. DEFINITIONS

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

#### TITLE I—EMPLOYMENT

##### SEC. 101. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) COVERED ENTITY.—The term "covered entity" means an employer, employment

agency, labor organization, or joint labor-management committee.

(3) EMPLOYEE.—The term "employee" means an individual employed by an employer.

(4) EMPLOYER.—

(A) The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(5) ILLEGAL DRUG.—The term "illegal drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), the possession or distribution of which is unlawful under such Act. The term "illegal drug" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by this Act.

(6) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(7) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

(8) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(9) UNDUE HARDSHIP.—

(A) IN GENERAL.—The term "undue hardship" means an action requiring significant difficulty or expense.

(B) DETERMINATION.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the overall size of the business of a covered entity with respect to the number of employees, number and type of facilities, and the size of the budget;

(ii) the type of operation maintained by the covered entity, including the composition and structure of the workforce of such entity; and

(iii) the nature and cost of the accommodation needed under this Act.

##### SEC. 102. DISCRIMINATION.

(a) GENERAL RULE.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job



application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) **CONSTRUCTION.**—As used in subsection (a), the term "discrimination" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) not making reasonable accommodations to the known physical or mental limitations of a qualified individual who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(6) denying employment opportunities to a job applicant or employee who is a qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(7) using employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(8) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) **MEDICAL EXAMINATIONS AND INQUIRIES.**—

(1) **IN GENERAL.**—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) **PREEMPLOYMENT.**—

(A) **PROHIBITED EXAMINATION OR INQUIRY.**—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant or employee as to whether such applicant or employee is an individual with a disability or as to the nature or severity of such disability.

(B) **ACCEPTABLE INQUIRY.**—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) **EMPLOYMENT ENTRANCE EXAMINATION.**—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such physical examination are used only in accordance with this title.

(4) **EXAMINATION AND INQUIRY.**—

(A) **PROHIBITED EXAMINATIONS AND INQUIRIES.**—A covered entity shall not conduct or require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) **ACCEPTABLE INQUIRIES.**—A covered entity may make inquiries into the ability of an employee to perform job-related functions.

SEC. 102. **DEFENSES.**

(a) **IN GENERAL.**—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation.

(b) **QUALIFICATION STANDARDS.**—The term "qualification standards" may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) **DRUG ADDICTS AND ALCOHOLICS.**—

(1) **IN GENERAL.**—A covered entity—

(A) may prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(B) may require that employees not be under the influence of alcohol or illegal drugs at the workplace;

(C) may require that employees conform their behavior to requirements established pursuant to the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and that transportation employees meet requirements established by the Secretary of Transportation with respect to drugs and alcohol; and

(D) may hold a drug user or alcoholic to the same qualification standards for employment or job performance and behavior to which it holds other individuals, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such individual.

(2) **CONSTRUCTION.**—Nothing in this title shall be construed to encourage, prohibit, or

authorize conducting drug testing of job applicants or employees or making employment decisions based on such test results.

(d) **RELIGIOUS ENTITIES.**—

(1) **IN GENERAL.**—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) **QUALIFICATION STANDARD.**—Under this title, a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization.

SEC. 104. **POSTING NOTICES.**

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SEC. 105. **REGULATIONS.**

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 106. **ENFORCEMENT.**

The remedies and procedures set forth in sections 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be available, with respect to the Commission or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 105, concerning employment.

SEC. 107. **EFFECTIVE DATE.**

This title shall become effective 24 months after the date of enactment.

## TITLE II—PUBLIC SERVICES

SEC. 201. **DEFINITION.**

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 202. **DISCRIMINATION.**

No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

SEC. 203. **ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY.**

(a) **DEFINITION.**—As used in this title, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(b) **VEHICLES.**—

(1) **NEW BUSES, RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.**—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973

(29 U.S.C. 794) for a public entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new commuter rail vehicle, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) **USED VEHICLES.**—If a public entity purchases or leases a used vehicle to be used for public transportation after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease such a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) **REMANUFACTURED VEHICLES.**—If a public entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle to be used for public transportation, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(C) **PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.**—

(1) **IN GENERAL.**—If a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public transit entity that is responsible for providing public transportation to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation unless the public transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity.

(2) **UNDUE FINANCIAL BURDEN.**—If the provision of comparable paratransit or other special transportation services would impose an undue financial burden on the public transit entity, such entity must provide paratransit and other special transportation services to the extent that providing such services would not impose an undue financial burden on such entity.

(3) **REGULATIONS.**—

(A) **FORMULA.**—Regulations promulgated by the Secretary of Transportation to determine what constitutes an undue financial burden, for purposes of this subsection, may include a flexible numerical formula that incorporates appropriate local characteristics such as population.

(B) **ADDITIONAL PARATRANSIT SERVICES.**—Notwithstanding paragraphs (1) and (2), the Secretary may require, at the discretion of the Secretary, a public transit authority to provide paratransit services beyond the amount determined by such formula.

(d) **COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.**—If a public entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation

Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) **TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.**—With respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such public entity from the obligation to purchase new buses of any size that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electro-mechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(f) **CONSTRUCTION.**—

(1) **IN GENERAL.**—Any relief granted under subsection (e) shall be limited in duration by a specified date and the appropriate committees of the Congress shall be notified of any such relief granted.

(2) **FRAUDULENT APPLICATION.**—If, at any time, the Secretary of Transportation has reasonable cause to believe that such relief was fraudulently applied for, the Secretary of Transportation shall—

(A) cancel such relief, if such relief is still in effect; and

(B) take other steps that the Secretary of Transportation considers appropriate.

(g) **NEW FACILITIES.**—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(h) **ALTERATIONS OF EXISTING FACILITIES.**—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If such public entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Secretary of Transportation),

such public entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving such area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(4) **EXISTING FACILITIES, INTERCITY RAIL, RAPID RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND KEY STATIONS.**—

(1) **EXISTING FACILITIES.**—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) **INTERCITY, RAPID, LIGHT, AND COMMUTER RAIL SYSTEMS.**—With respect to vehicles operated by intercity, light, rapid, and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) **KEY STATIONS.**—

(A) **IN GENERAL.**—For purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail, and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(B) **RAPID RAIL, COMMUTER RAIL, AND LIGHT RAIL SYSTEMS.**—Key stations in rapid rail, commuter rail, and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

(C) **INTERCITY RAIL SYSTEMS.**—All stations in intercity rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(D) **PLANS AND MILESTONES.**—The Secretary of Transportation shall require the appropriate public entity to develop a plan for compliance with this paragraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this paragraph.

SEC. 204. **REGULATIONS.**

(a) **ATTORNEY GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 203), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973

(29 U.S.C. 794) except, with respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

**(b) SECRETARY OF TRANSPORTATION.—**

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 203 of this title.

(2) **CONFORMANCE OF STANDARDS.**—Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

**SEC. 206. ENFORCEMENT.**

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this Act, or regulations promulgated under section 204, concerning public services.

**SEC. 207. EFFECTIVE DATE.**

(a) **IN GENERAL.**—Except as provided in subsection (b), this title shall become effective 18 months after the date of enactment of this Act.

(b) **FIXED ROUTE VEHICLES.**—Section 203(b)(1), as regarding new fixed route vehicles, shall become effective on the date of enactment of this Act.

**TITLE III.—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES**

**SEC. 301. DEFINITIONS.**

As used in this title:

(1) **COMMERCE.**—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) **POTENTIAL PLACES OF EMPLOYMENT.**—The term "potential places of employment" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) **PUBLIC ACCOMMODATION.**—The following privately operated entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(F) a laundromat, dry-cleaners, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park or zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

(4) **PUBLIC TRANSPORTATION.**—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(5) **READILY ACHIEVABLE.**—

(A) **IN GENERAL.**—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

(B) **DETERMINATION.**—In determining whether an action is readily achievable, factors to be considered include—

(i) the overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of budget;

(ii) the type of operation of the covered entity, including the composition and structure of the entity; and

(iii) the nature and cost of the action needed.

**SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.**

(a) **GENERAL RULE.**—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

(b) **CONSTRUCTION.**—

(1) **GENERAL PROHIBITION.**—

(A) **ACTIVITIES.**—

(i) **DENIAL OF PARTICIPATION.**—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

(ii) **PARTICIPATION IN UNEQUAL BENEFIT.**—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, and accommodation that is not equal to that afforded to other individuals.

(iii) **SEPARATE BENEFIT.**—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage,

or accommodation, or other opportunity that is as effective as that provided to others.

(B) **INTEGRATED SETTINGS.**—Goods, facilities, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) **OPPORTUNITY TO PARTICIPATE.**—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) **ADMINISTRATIVE METHODS.**—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) **ASSOCIATION.**—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) **SPECIFIC PROHIBITIONS.**—

(A) **DISCRIMINATION.**—As used in subsection (a), the term "discrimination" shall include—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, and accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, and accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable;

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, and accommodations available



through alternative methods if such methods are readily achievable;

(vi) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, and where the entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Attorney General), the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities, except that this paragraph shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

**(B) FIXED ROUTE SYSTEM.—**

(i) **ACCESSIBILITY.**—It shall be considered discrimination for an entity that uses a vehicle for a fixed route system to transport individuals not covered under section 203 or 304, to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs), except that over-the-road buses shall be subject to section 304(b)(4) and section 305.

(ii) **EQUIVALENT SERVICE.**—If such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title that is not readily accessible to or usable by individuals with disabilities, it shall be discriminatory for such entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public.

(C) **DEMAND RESPONSIVE SYSTEM.**—As used in subsection (a), the term "discrimination" shall include, in the case of a covered entity that uses vehicles in a demand responsive system to transport individuals not covered under section 203 or 304, an incident in which—

(i) such entity purchases or leases a vehicle carrying 16 or less passengers after the effective date of this title, a failure to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to the general public; and

(ii) such entity purchases or leases a bus or a vehicle that can carry in excess of 16 passengers for which solicitations are made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public, except that over-

the-road buses shall be subject to section 304(b)(4) and section 305.

**SEC. 302. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND POTENTIAL PLACES OF EMPLOYMENT.**

(a) **APPLICATION OF TERM.**—Except as provided in subsection (b), as applied to a—  
(1) public accommodation; and  
(2) potential place of employment;

the term "discrimination" as used in section 302(a) shall mean a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title.

(b) **ELEVATOR.**—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

**SEC. 303. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.**

(a) **GENERAL RULE.**—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) **CONSTRUCTION.**—As used in subsection (a), the term "discrimination against" includes—

(1) the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(i);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A)(iv), (v), and (vi);

(3) the purchase or lease of a new vehicle (other than an automobile or an over-the-road bus) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs (except in the case of a vehicle used in a demand response system, in which case the new vehicle need not be readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public); and

(4) the purchase or lease of a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 6 years after the date of enactment of this Act for small

providers (as defined by the Secretary of Transportation) and 5 years for other providers, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

**SEC. 305. STUDY.**

(a) **PURPOSE.**—The Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses; and

(2) the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities, particularly individuals who use wheelchairs.

(b) **CONTENT.**—The study shall analyze issues, including—

(1) the anticipated demand by individuals with disabilities for accessible over-the-road buses;

(2) the degree to which over-the-road buses are readily accessible to and usable by individuals with disabilities;

(3) the cost of providing accessibility to over-the-road buses to individuals with disabilities, including recent technological and cost saving developments in equipment and devices providing such accessibility;

(4) possible design changes in over-the-road buses that could enhance such accessibility; and

(5) the impact of accessibility requirements on the continuation of inter-city bus service by over-the-road buses, with particular consideration of impact on rural service.

(c) **ADVISORY COMMITTEE.**—In conducting the study required by subsection (a), the Architectural and Transportation Barriers Compliance Board shall establish an advisory committee, of which—

(1) 50 percent of the members shall be selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers; and

(2) 50 percent of the members shall be individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses.

(d) **DEADLINE.**—The study required by subsection (a), along with recommendations by the Board, shall be submitted to the President and the Congress within 36 months from the date of enactment of this Act.

**SEC. 306. REGULATIONS.**

(a) **ACCESSIBILITY STANDARDS.**—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2)(B) and (C) and section 304.

(b) **OTHER PROVISIONS.**—Not later than 1 year after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) **STANDARDS.**—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

**SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.**

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to

religious organizations or entities controlled by religious organizations, including places of worship.

#### SEC. 300. ENFORCEMENT.

##### (a) IN GENERAL.—

(1) **AVAILABILITY OF REMEDIES AND PROCEDURES.**—The remedies and procedures set forth in section 204 of the Civil Rights Act of 1964 (42 U.S.C. sec. 2000a-3(a)) shall be available to any individual who is being or is about to be subjected to discrimination on the basis of disability in violation of this title.

(2) **INJUNCTIVE RELIEF.**—In the case of violations of section 302(b)(2)(A)(iv) and (vi) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

##### (b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

##### (1) DENIAL OF RIGHTS.—

(A) **DUTY TO INVESTIGATE.**—The Attorney General shall investigate alleged violations of this title, which shall include undertaking periodic reviews of compliance of covered entities under this title.

(B) **POTENTIAL VIOLATION.**—If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any person or group of persons has been denied any of the rights granted by such title, and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) **AUTHORITY OF COURT.**—In a civil action under paragraph (1), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by this title;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding \$50,000 for a first violation; and

(ii) not exceeding \$100,000 for any subsequent violation.

#### SEC. 300. EFFECTIVE DATE.

This title shall become effective 18 months after the date of enactment of this Act.

#### TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

#### SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) **TELECOMMUNICATIONS.**—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

#### "SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) **DEFINITIONS.**—As used in this section—  
 "(1) **COMMON CARRIER OR CARRIER.**—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined

in section 3(h), any common carrier engaged in intrastate communication by wire or radio, and any common carrier engaged in both interstate and intrastate communication, notwithstanding sections 21(b) and 221(b).

"(2) **TDD.**—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) **TELECOMMUNICATIONS RELAY SERVICES.**—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

##### "(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

"(1) **IN GENERAL.**—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) **REMEDIES.**—For purposes of this section, the same remedies, procedures, rights, and obligations under this Act that are applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication by wire or radio and common carriers engaged in both interstate and intrastate communication by wire or radio.

"(c) **PROVISION OF SERVICES.**—Each common carrier providing telephone voice transmission services shall provide telecommunications relay services individually, through designees, or in concert with other carriers not later than 2 years after the date of enactment of this section.

##### "(d) REGULATIONS.—

"(1) **IN GENERAL.**—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met by common carriers in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of

any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) **TECHNOLOGY.**—The Commission shall ensure that regulations prescribed to implement this section encourage the use of existing technology and do not discourage or impair the development of improved technology.

##### "(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) **IN GENERAL.**—The Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) **RECOVERING COSTS.**—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from the interstate jurisdiction and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction.

"(C) **JOINT PROVISION OF SERVICES.**—To the extent interstate and intrastate common carriers jointly provide telecommunications relay services, the procedures established in section 410 shall be followed, as applicable.

"(4) **FIXED MONTHLY CHARGE.**—The Commission shall not permit carriers to impose a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunication relay services.

"(5) **UNDUE BURDEN.**—If the Commission finds that full compliance with the requirements of this section would unduly burden one or more common carriers, the Commission may extend the date for full compliance by such carrier for a period not to exceed 1 additional year.

##### "(e) ENFORCEMENT.—

"(1) **IN GENERAL.**—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) **COMPLAINT.**—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

##### "(f) CERTIFICATION.—

"(1) **STATE DOCUMENTATION.**—Each State may submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services.

"(2) **REQUIREMENTS FOR CERTIFICATION.**—After review of such documentation, the Commission shall certify the State program if the Commission determines that the program makes available to hearing-impaired and speech-impaired individuals either directly, through designees, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets the requirements of regulations prescribed by the Commission under subsection (d).

"(3) **METHOD OF FUNDING.**—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunications relay services.

"(4) **SUSPENSION OR REVOCATION OF CERTIFICATION.**—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted.

##### "(g) COMPLAINT.—

"(1) **REFERRAL OF COMPLAINT.**—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f)."

(b) CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 224" and inserting "sections 224 and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

#### TITLE V—MISCELLANEOUS PROVISIONS

##### SEC. 401. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act.

(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, or observing the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;

Provided, that paragraphs (1) and (2) shall not be used as a subterfuge to evade the purposes of titles I, II, and III.

##### SEC. 402. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

(c) REMEDIES AND PROCEDURES.—The remedies and procedures available under sections 108, 205, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b).

##### SEC. 403. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of

the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

##### SEC. 404. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

(b) CONTENTS OF GUIDELINES.—The guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

##### SEC. 405. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

##### SEC. 406. TECHNICAL ASSISTANCE.

(a) PLAN FOR ASSISTANCE.—The Attorney General, in consultation with the Secretary of Transportation, the Chairman of the Federal Communications Commission, and the Secretary of Commerce shall, within 180 days of the enactment of this Act, develop and implement a plan to assist entities covered under this Act in understanding the responsibilities of such entities under this Act.

(b) AGENCY ASSISTANCE.—The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out the responsibilities as described in subsection (a).

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DOLE. If the Senator from Iowa has no objection, I would like to make a 2-minute statement on a very important disabled person who is in our midst today.

#### WELCOMING REMARKS—ILYA ZASLAVSKI

Mr. DOLE. I want to welcome to the United States Senate and to the United States this morning a distinguished member of the Soviet National Legislature—a man who carries an extraordinary message of hope to his fellow Soviet citizens and the rest of the world as well.

Ilya Zaslavski was elected to the Soviet National Legislature last March. He defeated a cool and smooth television commentator who had the backing of the Communist Party in an election that occurred in Mikhail Gorbachev's own Moscow voting district.

His message was so powerful that none other than Andrei Sakharov bowed out of the race and backed him.

This would be an amazing accomplishment for any person. But for a

29-year-old textile research scientist from Moscow there were even more obstacles to overcome. Because Ilya Zaslavski is disabled—and has been since childhood.

Now he has taken up the cause of the disabled in a country where wheelchair ramps are practically nonexistent and public policy toward the disabled has amounted mostly to shunting them off to special homes in far-away places.

Ilya Zaslavski is the man who stands before the Kremlin powerful and quietly, passionately, asks the questions:

Why not defend the weak? How long shall we forget about the sick, the old, the abandoned children? How long will hospital patients have to go without food and medicine?

He is a man of courage and perseverance. Those around the country who will hear his words in the coming weeks should consider themselves privileged.

To Ilya Zaslavski I can only say welcome to America—we are glad you are here.

Your message—your life story—will serve as an inspiration to each and every American you will meet.

We are also privileged this morning to have with us a man with a long record of accomplishment in the area of disability rights. A man I have had the pleasure to work with on occasion—recognized around the country for his work in this important public policy area. The president of the National Organization on Disability—Alan Reich.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BREAUX). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I rise in support of the bill now before the Senate, the substitute amendment, S. 933, the Americans with Disabilities Act of 1989, which I was proud to introduce in this session of Congress.

Mr. President, today in a very real sense, 43 million Americans with disabilities say with one voice that "Our time has come." To my 63 colleagues, Republican and Democrat, who have cosponsored this legislation, I want to take this opportunity to say thank you for your help in making history. To my colleagues who have not yet cosponsored—and I want to again extend the invitation to join us in order to ensure rapid and successful passage of the Americans with Disabilities Act—I want to thank particularly three individuals; first, the chairman of the full Committee on Labor and Human Resources, Senator KENNEDY, for his very strong and courageous leadership through the long hours, days, weeks,

ing, enjoying public services, and generally living full, equal lives free from discrimination.

Mr. HATCH. I want to thank my colleague for his comments on this matter and for his time on this matter. I think we have clarified this about as well as we can.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The chair recognizes the Senator from Iowa.

AMENDMENTS NOS. 711 AND 712  
(Purpose: To provide a technical amendment)

Mr. HARKIN. Mr. President, I have two technical amendments which I send to the desk on behalf of myself and the other members of the committee and I ask that they be considered en bloc.

The PRESIDING OFFICER. Is their objection to the consideration of the amendments en bloc? There being no objection, they will be so considered, and the clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes en bloc amendments numbered 711 and 712.

Mr. HARKIN. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT No. 711

On page 92, line 18, insert a comma after "agent".

AMENDMENT No. 712

On page 86, line 22, strike "2" and insert "3".

Mr. HARKIN. Mr. President, the first amendment simply adds a comma that was inadvertently left out, which may change the meaning or understanding of the sentence in the bill. The second one that I sent up regarding title IV C, provision of services. The provision of services section has been changed from allowing 2 years for the full implementation of services by the carriers to 3 years.

This accomplishes as the bill previously was written and it mandated that the carriers implement an interstate and intrastate relay system within 2 years' time. This did not allow for any time for the State regulatory process to occur.

As amended, the carriers will have 3 years to commence operation of the nationwide relay system. This allows ample time for the FCC to issue its regulations and for the State regulatory process to occur.

This legislation seeks to preserve State and grassroots efforts in the implementation of intrastate relay systems. States must be given time to either devise regulations or legislate for such systems, and then have time to seek and be granted certification by the FCC.

We must preserve the opportunity for the hearing and speech impaired to comment as individual States seek certification. Comments from the valuable insights of the hearing impaired community must be taken into consideration by the FCC as it grants States certification, and this process takes time.

As the State regulatory process and certification process ends, the carriers would then have sufficient time to fully implement any State and Federal regulations in the most efficient manner possible.

So this amendment which I send up helps to ensure that the relay system established by the carriers is the most efficient and highest quality possible. It also gives the carriers time to work in conjunction with each other to make the relay system more economical.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. We agree with these amendments and we urge that they be accepted here on the Senate floor.

The PRESIDING OFFICER. The question occurs on the amendment.

The question is on agreeing to the amendments of the Senator from Iowa.

The amendments (No. 711 and No. 712) were agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. HARKIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT No. 709

(Purpose: To provide a refundable tax credit for the costs of small businesses complying with the public accommodations requirements.)

Mr. HATCH. Mr. President, I call up Amendment No. 709 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. KERREY, Mr. MCCAIN, Mr. McCONNELL, and Mr. THURMOND proposes an amendment numbered 709.

Mr. HATCH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . REFUNDABLE TAX CREDIT FOR COSTS ASSOCIATED WITH PUBLIC ACCOMMODATIONS REQUIREMENTS.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

"SEC. 35. COSTS OF PROVIDING NONDISCRIMINATORY PUBLIC ACCOMMODATIONS TO DISABLED INDIVIDUALS.

"(a) GENERAL RULE.—In the case of eligible small business, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

"(1) the eligible public accommodations access expenditures for the taxable year, or

"(2) \$5,000.

"(b) ELIGIBLE SMALL BUSINESS.—For purposes of this section, the term 'eligible small business' means a person—

"(1) engaged in the trade or business of operating a public accommodation to which the requirements of title III of the Americans with Disabilities Act of 1989 applies,

"(2) the gross receipts of which for the preceding taxable year did not exceed \$1,000,000,

"(3) which employs fewer than 15 employees, and

"(4) which elects the application of this section for the taxable year.

"(c) ELIGIBLE PUBLIC ACCOMMODATIONS ACCESS EXPENDITURES.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible public accommodations access expenditures' means amounts paid or incurred—

"(A) for the purpose of removing architectural, communication, or transportation barriers which prevent a public accommodation from being accessible to, or usable by, an individual with a disability, or

"(B) for providing auxiliary aids and services to individuals with a disability who are employees of, or using, the public accommodation.

"(2) EXPENSES IN CONNECTION WITH NEW CONSTRUCTION ARE NOT ELIGIBLE.—The term 'eligible public accommodations access expenditures' shall not include expenses described in paragraph (1)(A) which are paid or incurred in connection with the design and construction of any facility the first occupancy of which occurs after December 31, 1989.

"(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) AUXILIARY AIDS AND SERVICES AND DISABILITY.—The terms 'auxiliary aids and services' and 'disability' have the meanings given such terms by paragraphs (1) and (2) of section 3 of the Americans with Disabilities Act of 1989.

"(2) PUBLIC ACCOMMODATION.—The term 'public accommodation' has the meaning given such term by section 301(3) of the Americans with Disabilities Act of 1989.

"(3) CONTROLLED GROUPS.—

"(A) IN GENERAL.—All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(d)) shall be treated as 1 person for purposes of this section.

"(B) DOLLAR LIMITATION.—The Secretary shall apportion the dollar limitation under subsection (a)(2) among the members of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

"(4) PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership, the limitation under subsection (a)(2) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

"(5) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in calendar year 1991 or thereafter, this section shall be applied by increasing the \$5,000 amount under subsection (a)(2) and the \$1,000,000 amount under subsection (b)(2) by the cost-of-living adjustment for the cal-

endar year. The cost-of-living adjustment for any calendar year shall be determined under section 1043, except that subparagraph (B) hereof shall be applied by substituting '1960' for '1987'.

"(d) NO DOUBLE BENEFIT.—No deduction or credit shall be allowed under this chapter with respect to any amount for which a credit is allowed under subsection (a).

"(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out the purposes of this section, including regulations for determining what expenditures are to be treated as eligible public accommodations access expenditures."

"(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 35 and inserting:

"Sec. 35. Costs of providing nondiscriminatory public accommodations to disabled individuals.

"Sec. 36. Overpayments of tax."

"(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, this is an important amendment and I would add in addition to the Hatch-Kerrey amendment Senators McCAIN, MCCONNELL, and THURMOND as cosponsors.

Mr. President, while I share the desire of my colleagues to pass a bill as broad and reasonable as possible, I am concerned with the economic consequences this bill may have on some small businesses. S. 933 covers businesses as employers. It also covers businesses as public accommodations, that is as businesses which serve the public by serving customers, clients and visitors.

The employment provisions of S. 933 are contained in title I of the bill. They are effective 2 years after enactment when they apply to employers with 25 or more employees. Two years after that, employers with 15 or more employees will be covered under this bill. So the figure of 25 will reduce down to 15 on the employment side of this bill.

The purpose of that, of course, is to help small businesses, because this bill is going to be very expensive. It is going to impose a lot of expenses and rightly so. It is time that we did these things. It is time that we brought persons with disabilities into full freedom, economic and otherwise, with other citizens in our society. This bill will do that. In doing so we should be aware that it is going to be costly and it is going to be difficult and there will be some complaints.

If we do not solve the other point I am about to make now, we are really going to have problems. S. 933 requirements imposed on public accommodations are contained in title III of this bill. S. 933 defines public accommodations much more broadly than they are defined in any parallel civil rights statute, specifically title II of the 1964 Civil Rights Act.

Title II of the 1964 Civil Rights Act bans racial, ethnic and religious discrimination in public accommodations.

There, public accommodations are defined as places of eating, places of lodging, places of entertainment, and gasoline stations. That is title II of the most broad-sweeping Civil Rights Act in history up until now.

In other words, public accommodations are defined that narrowly; places of eating, lodging, and entertainment and gasoline stations.

S. 933 in turn, the bill which I am for, defines public accommodations to include not only these businesses but all retail businesses, all service businesses, and more. From sole proprietorships all the way up, beyond 15-employee businesses. In contrast to the employment provisions, however, S. 933 contains no exemption whatsoever from its public accommodations provision.

In other words, we have chosen to exempt businesses that have 25 employees for the first 2 years, then we reduce it down to 15 employees from that point on, from any of the burdens of this bill with regard to employment.

But there is absolutely no consideration given to small businesses, similarly situated with regard to the public accommodations aspect.

Thus a rural grocery store—and you better get this—a rural grocery store may not be covered by S. 933 when it hires a clerk, but it would be subject to all the bill's requirements with respect to the treatment of its customers. Now I think it should be, and I am prepared to vote for that. But let us all be aware that if we do not have some sort of accommodations, some way of resolving this problem for the small small businesses, "the moms and pops," if you will, the sole proprietorships in our society, then you are going to find a lot of people going out of business because they will not be able to meet the burdens of this particular bill unless we find some way of alleviating that.

Mr. President, as I have said, I want every business in America to serve persons with disabilities. I strongly stand for that. I mean it. This is important. But at the same time, we have to recognize that Federal requirements cost money and some of these people cannot afford to come up with that money.

Someone has to pay for our desire, Congress' desire, if you will, to accommodate persons with disabilities where such accommodations increase costs. In the case of small businesses, they are required to provide auxiliary aids and services for their customers when necessary and to provide them with access so long as doing so does not cause undue burden. Moreover they must remove architectural communication and transportation barriers in existing facilities, areas, or businesses and vehicles, when such barrier removal is "readily achievable."

The terms "undue burden" and "readily achievable" are defined in the bill. Even though in theory these requirements impose less costs, these

costs will be more than de minimis where necessary to provide access. For some small businesses, any additional cost or administrative burden can be very troublesome.

Now I am concerned about those small businesses, and that is why I support this amendment. Traditionally, Mr. President, we attempted to resolve such dilemmas by setting exemptions. A business that falls within the exemption is not bound by the requirements of the act. We have done that with regard to the employment record of this act. Unfortunately, with regard to the services record, which is called public accommodations in this act, such a step would be incompatible with the desire to have coverage applied as broadly as possible.

There is, however, Mr. President, another way. We can cover all small businesses and mitigate the cost of compliance with Federal requirements by granting certain small businesses a tax credit for the cost of steps they take to make their businesses accessible to persons with disabilities.

Currently, section 190 of the Tax Code provides a deduction of up to \$35,000 a year for architectural and transportation barrier removal. My amendment authorizes a tax credit for removal of architectural, transportation, and communication barriers as well as for other accommodations to provide access for persons with disabilities.

The tax credit is available when undertaken to accommodate an employee or a customer and it is limited to \$5,000 a year and it is refunded. The credit would only apply to small businesses which are public accommodations as defined by S. 933, have less than 15 employees and a gross income of \$1 million or less, really small small businesses.

This gross income figure and the \$5,000 credit figure will be indexed annually so that these small small businesses have a break.

Mr. President, such a proposal would retain the bill's broad coverage in public accommodation without penalizing small employers who barely get by as it is. We would not have to wait for lawsuits and the courts to determine the meaning of terms like "undue burden" and "readily achievable" in the context of a small business. And most importantly we would be helping those who want to comply instead of simply penalizing those who do not.

We have a responsibility, Mr. President, to insure that persons with disabilities are accommodated in public accommodations. At the same time, Mr. President, we have a responsibility to ensure that we in Congress address the economic realities of the requirements we impose. My amendment balances those responsibilities and avoids the need to use an exemption.

Mr. President, it is no secret that the small small businesses of this country,



are covered or expressly exempted from coverage under the Fair Housing Act of 1968."

Mr. BOSCHWITZ. Could the Senator from Iowa, or perhaps the Senator from Massachusetts, describe to me how mental handicaps are covered by this, and how an employer is affected? I am trying to put myself in this position. I have hired a lot of people in my business career. What happens if somebody comes and has some mental infirmity? How does the employer, the small businessman, treat that person when he comes and applies for a job?

Mr. HARKIN. Just as any other person that comes and applies for a job.

Mr. KENNEDY. Will the Senator yield?

Mr. BOSCHWITZ. Yes.

Mr. KENNEDY. I think, if my good friend from Iowa would yield, first of all we have the definition of a disability, which the Senator is familiar with. It is spelled out, on page 41 of the bill, as follows:

The term "disability" means, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; or the record of such an impairment; or being regarded as having such an impairment.

So I would see the situation where, if there were someone who was mentally retarded and was going in to apply for a job as a laser scientist, and the employer said he is not—

Mr. BOSCHWITZ. That is not going to happen.

Mr. KENNEDY. I cannot hear the Senator.

Mr. BOSCHWITZ. That is not what happens. I do not employ laser scientists. I never did. How about a warehouse man—

Mr. KENNEDY. If I can try to answer the Senator's question, maybe it will not be an adequate answer but if I may be permitted to try to complete the answer? What he is basically talking about is if that individual has the ability or capacity to perform the job and the reason that employer says no is because that person is mentally retarded, then this act provides protection.

If the job description is going to be one in which that individual does not have the capability because of said mental retardation or mental illness, he cannot perform the essential functions, then the decision by the employer not to hire that individual would not be a violation of the act, if there was no possible reasonable accommodation.

Mr. BOSCHWITZ. I must confess to the Senator from Massachusetts that in my business I not only did not hire laser scientists, in most instances, I did not even have a job description for people who came in to be hired. It is a very subjective type of judgment that I made—that most businessmen make—unless they are looking for laser scientists or unless they are looking for a schoolteacher or unless they

are looking for people who have specific skills.

My business was a retail business. I would say to the Senator from Massachusetts, a business person makes a pretty subjective judgment as to whether or not a person has the ability to sell, or do warehouse work. These are the things that we got involved in. Those kinds of subjective judgments that employers have been making can still be made under this act. Is that correct?

Mr. KENNEDY. The Senator is correct. "Qualified individual with a disability" is someone with a disability who with or without reasonable accommodation can perform the essential functions of the employment position that such individual holds or desires. Essential functions is defined as meaning "job tasks that are fundamental and not marginal."

Mr. BOSCHWITZ. I thank the Senator from Massachusetts. I would say the legislation that has been passed here, in Congress, over the years, has given greater access to people who have disabilities of various types. It is very rewarding to see people who have disabilities able to lead fuller lives. I have been blessed to not have had disabilities, nor my children, thankfully. So I do not have, perhaps, as direct experience as some. But to see people being able to live fuller and richer lives is indeed one of the better things that I have observed in recent years.

I just must say, Mr. President, it is difficult to make out the scope of this act. When I have some more time to look at the bill, I may make more comments here on the floor. Or I will ask my friend, the Senator from Arkansas, who I see has now left, to hold some hearings in the Small Business Committee. We need to get a better understanding of the scope of this bill and how it impacts small business and business in general.

As I understand it, the bill really was negotiated during this past recess. The report was printed, or ordered to be printed, on the 30th of August, and it is now the 7th of September. As a result we have had, if I may say so, inadequate time to consider this bill. Perhaps the Senator from Iowa, who has been working assiduously on this bill for a period of time, does not think so. The Senator from Minnesota, however, feels that he has not yet had a very good opportunity to examine the bill.

#### AMENDMENT NO. 713

(Purpose: To require a judge to consider if a defendant who is accused of discrimination on the basis of disability has acted in good faith)

Mr. BOSCHWITZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows: The Senator from Minnesota [Mr. Boschwitz] proposes an amendment numbered 713.

On page 84, between lines 7 and 8, insert the following new paragraph:

(3) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity.

Mr. BOSCHWITZ. Mr. President, as the ranking minority member of the Senate Small Business Committee, I am concerned about the effect of this legislation on small business. Frankly, I am afraid many Members do not fully understand the impact of this bill. Yet it is probably going to go to final passage this evening, a day or two after we reconvene after a recess. It may well be that small business will find itself least able to afford the changes that are mandated by the pending legislation.

I do not mean to suggest for a moment that handicapped people should not receive all the consideration they need in order to live meaningful lives. My amendment would amend title III of this bill, the public accommodations section of the Americans With Disabilities Act. Currently in title III, when an individual believes he or she has been discriminated against on the basis of a disability, the Attorney General—and it is my understanding that that is the United States Attorney General—can file a civil action in Federal court, seeking an injunction and monetary damages.

I'd like to turn to the act once again and ask my friend from Iowa another question.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. If the Senator will yield, is the Senator through offering his amendment?

Mr. BOSCHWITZ. No. I am not through offering the amendment. On page 83, section B says, "If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in the pattern or practice of resistance," so forth.

This is the Attorney General of the United States, as I understand it; is that correct?

Mr. HARKIN. That is true; it is the Attorney General of the United States.

Mr. BOSCHWITZ. Often there is a right of referral or there is a concurrent authority that is given to a State attorney general so that the State attorney general can initiate these lawsuits. Is that anticipated or is that possible under these provisions?

Mr. HARKIN. This does not preempt the State from adopting those kinds of provisions.

Mr. BOSCHWITZ. I understand it is not preempting the State from passing the same kind of law, but there would not be a referral to the State attorney general or the State attorney general would not have concurrent jurisdiction granted him by the Attorney General of the United States so that he could

move forward with this kind of litigation; am I correct in that?

Mr. HARKIN. The Senator is correct.

Mr. BOSCHWITZ. I thank the Senator. In any case, under title 3, when an individual believes that he or she has been discriminated against on the basis of a disability, the Attorney General can file a civil action in Federal court seeking an injunction in monetary damages. The damages could take the form of a civil penalty for as much as \$50,000 for a first time violator or up to \$100,000 for a repeat offender. In addition, the Attorney General is authorized to seek monetary damages for the individual harmed by the discrimination.

My amendment will specify that during the process of assessing that injury, if any, that has been caused an individual, a court must take into consideration the good faith effort on the part of the defendant to comply with this act.

Clearly, the Americans With Disability Act is a complicated piece of legislation. Employers are going to be required to spend billions of dollars, regrettably, in modifying their facilities in order to comply. The majority of businesses start out with a total capital in the beginning of under \$20,000.

It will be virtually impossible for many of these small businesses to immediately accommodate all types of disabilities. The point to this legislation is that they should comply, but during the period leading up to full compliance, they should be given the benefit of reasonable, good faith efforts to comply.

My amendment will not deter efforts to prevent discrimination based on a handicap. It would, however, be beneficial to small business who are attempting to comply but are still caught in a civil action that results in large financial penalties.

I urge my colleagues to support this amendment to S. 933.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Is the Senator making a request for the yeas and nays?

Mr. BOSCHWITZ. I make the request for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Washington [Mr. ADAMS], the Senator from Montana [Mr. BAUCUS], the Senator from Ohio [Mr. GLENN], the Senator from North Carolina [Mr. SANFORD], and the Senator from Tennessee [Mr. SASSER] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Montana [Mr. BURNS], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Mississippi [Mr. LOTT], the Senator from Alabama [Mr. MURKOWSKI], and the Senator from Delaware [Mr. ROTH] are necessarily absent.

The result was announced—yeas 90, nays 0, as follows:

[Rollcall Vote No. 171 Leg.]

#### YEAS—90

Armstrong	Fowler	McCain
Bentsen	Garn	McClure
Biden	Gore	McConnell
Bingaman	Gorton	Metzenbaum
Bond	Graham	Mikulski
Boren	Graham	Mitchell
Boschwitz	Grassley	Moynihan
Bradley	Harkin	Nickles
Breaux	Hatch	Nunn
Bryan	Hatfield	Packwood
Bumpers	Heflin	Pell
Burdick	Heins	Pressler
Byrd	Helms	Pryor
Chafee	Hollings	Reid
Coats	Inouye	Riegle
Cochran	Jeffords	Robb
Cohen	Johnston	Rockefeller
Conrad	Kassebaum	Rudman
Cranston	Kasten	Sarbanes
D'Amato	Kennedy	Shelby
Danforth	Kerrey	Simon
Daschle	Kerry	Simpson
DeConcini	Kohl	Specter
Dixon	Lautenberg	Stevens
Dodd	Leahy	Symms
Dole	Levin	Thurmond
Domenici	Lieberman	Wallop
Durenberger	Lugar	Warner
Exon	Mack	Wilson
Ford	Matsunaga	Wirth

#### NAYS—0

#### NOT VOTING—10

Adams	Humphrey	Sanford
Baucus	Lott	Sasser
Burns	Murkowski	
Glenn	Roth	

So the amendment (No. 713) was agreed to.

Mr. BOSCHWITZ. I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BOSCHWITZ. Mr. President, I would like to clarify with my friend from Iowa the question of part-time employees. He was able to do so for me on the floor here and perhaps we can get him to do so on the RECORD. I would also like to put into the RECORD a lead editorial from the New York Times of yesterday. Perhaps it was already put into the RECORD.

Mr. KENNEDY. May we have order, Mr. President? The Senator is entitled to be heard.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BOSCHWITZ. I would like to put into the RECORD the lead editorial from yesterday's New York Times and before I do so, I would like to read just a little bit from it. The first paragraph says: "With surprisingly narrow public scrutiny, Congress is moving swiftly to extend broad civil rights protection to the Nation's 40 million disabled citizens."

Mr. HARKIN. May we have order in the Senate? I cannot hear.

The PRESIDING OFFICER. We will have order in the Senate. The staffs will take their seats in the back of the room.

The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, "The sentiment is laudable," the editorial continues. I certainly agree with that. "To bring the disabled closer to the mainstream of American society. But the legislation is vague; not even its defenders are able to calculate its benefits and costs. Those costs could be monumental. The proposal thus requires patient, unemotional examination." And that is something that I have not yet had the time to do, I say to the President. But it is true that with surprisingly narrow public scrutiny, as the New York Times lead editorial says, we are adopting a very, very broad bill.

The editorial also states that the bill calls for a study after the bill is passed, not before, to determine how much this would cost the companies. And that is why I asked that the Small Business Committee perhaps hold hearings after the passage of the bill here in the Senate to get a better understanding of what would be imposed on business in general and small business most particularly.

"The bus companies are angry," the editorial continues. "Most businessmen are simply fretful and confused. That's partly because the bill's language is so vague."

So we are considering a major major piece of legislation, I say to the President of the Senate. And we are doing so with narrow public scrutiny, and narrow scrutiny here in the Senate itself.

My friend, the Senator from Iowa, points out that because of the very low rates of employment among the handicapped, 25 percent among men and 13 percent among women, perhaps this bill will improve that and perhaps there will be broad savings to the Government and to society if the handicapped were able to work, and they would be able to live fuller, richer, more meaningful lives.

I certainly agree with that, and I hope that this bill achieves those goals. But just as the editorial writers of the New York Times felt there was rather narrow scrutiny of this legislation, so do I, and it is because of that that I have made the statements and asked the questions that I have asked. Would the Senator from Iowa now tell us a definition of what 15 employees means?

Mr. HARKIN. If the Senator would yield, after checking the full definition, as I understand it, the definition is that the 15 employees, each of the 15 employees have to work 20 hours per week. That is really the definitive point, and that is the 20 hours per week. So that as I understand it, if you had 14 employees that worked for 20 hours, but you only had 1 who worked for 10 hours, then you are not covered.

It has to be 15 that work 20 hours each per week.

Mr. BOSCHWITZ. It is not very clear because it says 15 or more employees for each working day and each for 20 or more calendar weeks in the preceding calendar year.

Mr. HARKIN. It has been in effect for 25 years. We copied that language.

Mr. BOSCHWITZ. That is what it intends to mean.

Mr. HARKIN. Yes.

The PRESIDING OFFICER (Mr. MIKULSKI). The Senator from Tennessee.

Mr. GORE. I rise in support of S. 933. This bill represents a long-overdue declaration by our country that people with disabilities deserve fair and equal treatment in our society. Discrimination against such persons can no longer be tolerated. It is a statement of a very basic concept: People with disabilities are full and equal citizens of America, and they shall no longer be locked out, harassed, shunned, abused or otherwise deprived of opportunities that other Americans take for granted.

Madam President, in hearings before the Subcommittee on the Handicapped of the Senate Committee on Labor and Human Resources, Dr. Mary Lynn Fletcher of Lenoir City, TN, gave very graphic descriptions of the types of discrimination she and other people with disabilities face on a daily basis. She spoke eloquently about what she termed "the benign neglect and outright discrimination we face every day." In her testimony, Dr. Fletcher stated:

I live in agony from week to week as to how I shall be able to get my groceries or how I can gas my car at the self-service stations. When I am able to go to Knoxville to hear our orchestra, I am unable to get into the building. When I do get inside the building, if I need to go to the bathroom, I would have to crawl up a flight of stairs.

One of the key rights of Americans is the right to exercise judgment to select the officers and officials who will make up our Government. That is the right to vote.

Hear again, the right of access to the ballot box is one of the cornerstones of our American system, and as Dr. Fletcher testified,

We who are mobility impaired or sensory impaired do not yet have the right to vote by virtue of inaccessibility.

As a practical matter, many Americans with disabilities find it impossible to vote. Obviously, such a situation is completely unacceptable and unconscionable. We must take strong action to end the tradition of blatant and subtle discrimination that has made people with disability second-class citizens.

No one can tell who might have a disability someday as a result of accident, illness, or simply as an aspect of the aging process. Prohibiting discrimination on the basis of disability is an investment in the future of all individual and our Nation as a whole. This

act would establish a clear prohibition against discrimination on the basis of disability and would promote the development of reasonable, definitive and effective standards for assuring access for people with disabilities.

By requiring only modifications that are readily achievable and providing that employers do not have to take actions that are unduly burdensome, the bill establishes flexible, workable and realistic obligations to eliminate discrimination against persons with disabilities. The time has come for enactment of such legislation that says to all persons with disabilities, "You are a welcome and valued member of our society. Henceforth, discrimination against you shall be unlawful."

So, Madam President, to do less would be unfair, imprudent and un-American. I am proud to support this vital legislation, and I compliment the sponsors and the authors of the bill and urge my colleagues to support it.

Mr. KASTEN addressed the Chair.

The PRESIDING OFFICER. Senator from Wisconsin.

Mr. KASTEN. Today we are discussing a landmark piece of legislation, the American with Disabilities Act of 1989. This bill is thought-provoking in that it calls to mind many real, and unmet, needs of our disabled citizens.

As I watched this floor debate this morning, we realized an alarming fact, that our debate was completely inaccessible to hearing-impaired Americans. Nobody had considered providing an interpreter for the hearing-impaired citizens who will be so vitally affected by this legislation, by our deliberations today.

So I scrambled along with the leadership and the floor managers to arrange for an interpreter, and our debate is now being simultaneously translated into sign language. I sincerely hope that we can extend our use of this service and further integrate hearing-impaired Americans into our national legislative process.

Mr. ARMSTRONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. I wonder if I could seek the assistance of a manager or somebody who is knowledgeable about the contents of this bill. I am concerned because it has come to my attention today that there are provisions in this bill that I do not understand. I came to work this morning thinking that we are going to vote on a bill to help the handicapped, and I would certainly be sympathetic to that.

I would not think you would have to be very smart to know that the ideals of our country certainly call upon the Senate to do whatever it can to be helpful to people in wheelchairs or who have some kind of a physical disability or handicap of some sort and who are trying to overcome it. I am concerned because it has been brought

to my attention by counsel that there is doubt about some of the provisions.

Specifically, as I understand it, this bill intends to prohibit discrimination on the basis of disability in employment, public accommodation, public services and telecommunication. It defines disability as a physical or mental impairment that substantially limits one or more of the major life activities of such an individual.

What concerns me is the thought that this disability might include some things which by any ordinary definition we would not expect to be included. When my staff drew my attention to this—and I guess they must have spent most of August working on it, because they came in armed with cases and memos and so forth, which I have not fully digested. They are concerned that we will not cover such things as illegal drugs.

For example, if a person is a consumer of illegal drugs, does he gain a protected status under this bill?

Mr. HARKIN. I can answer definitively to the Senator that current users of illegal drugs are not, and we are working out a couple of amendments with the Senator from North Carolina and a couple of others to better clarify that.

Mr. ARMSTRONG. I appreciate that.

Would the same apply to alcohol abuse?

Mr. HARKIN. The same thing applies to alcohol abuse.

Mr. ARMSTRONG. I thank the Senator.

May I read a list of related items? I think perhaps the Senator is going to allay some of my fears.

Mental disorders, such as alcohol withdrawal, delirium, hallucinosis, dementia with alcoholism, marijuana, delusional disorder, cocaine intoxication, cocaine delirium, disillusional disorder.

I have a whole list of these.

Am I correct in assuming that these would not be covered as disabilities?

Mr. HARKIN. Well, obviously I am not familiar with these disorders.

Mr. ARMSTRONG. Can I submit this list and ask that the staff look at it overnight?

When my people brought it to my attention, my first reaction is, come on, you guys have had to much time and not enough to do to come up with this list.

But in fact, they responded by saying that the list was drawn from court cases under other legislation which has similar definitions. I could not imagine the sponsors would want to provide a protected legal status to somebody who has such disorders, particularly those who might have a moral content to them or which in the opinion of some people have a moral content.

What I would like to do is submit this list for the Senator and his staff to look at overnight; so if that is the

case, we ought to address it and straighten it out if we could.

Mr. HARKIN. I will be forthright to the Senator from Colorado. I am hopeful we will finish the bill tonight. The majority leader said that. I said we are looking to clarify the intent of the legislation. Some people brought things to my attention earlier that I think do need clarification, that current users or illegal drugs are not covered by this bill.

Mr. ARMSTRONG. How about homosexuality and bisexuality?

Mr. HARKIN. That is not covered by this bill.

Mr. ARMSTRONG. How about exhibitionism, pedophilia, voyeurism, and similar?

Mr. HARKIN. That is not covered by this bill.

Mr. ARMSTRONG. That is not covered?

Mr. HARKIN. I can state definitively that is not covered.

Mr. ARMSTRONG. How about compulsive kleptomania, or other impulse control disorders?

Mr. HARKIN. Those are not covered.

Mr. ARMSTRONG. I beg your pardon. You say you are sure?

Mr. HARKIN. They are not.

Mr. ARMSTRONG. How about conduct disorder, any other disruptive behavior disorder, not covered?

Mr. HARKIN. There we are a little uncertain, because some may be mental disorders or may be closely connected with a mental disorder; they could be covered.

Mr. ARMSTRONG. I think this has been helpful. I will submit a list and will be grateful if we could return to the subject, because I would feel uncomfortable if there were some doubt and Senators then found themselves in a situation where, for example, someone who abused alcohol or abused marijuana or something, tried to seek protection under this act and employers were put to a test and there was doubt about it.

If there is any doubt, I would like to offer an amendment. If there is not any doubt, I am perfectly satisfied to clarify the record.

Could I, while I have the managers' attention, ask one other question, and perhaps we could just solve that problem without an amendment as well.

I am told that in the bill there is a provision which says in effect that a party who brings litigation under this bill, if the party is successful, may recover attorneys' fees from the other party to the case. Is this correct?

Mr. HARKIN. The only way that applies, is getting injunctive relief. I tell the Senator that the first draft of the bill when it was introduced last year provided for the recovery of compensatory damages, punitive damages. We have taken that out.

The only cause of action now for an individual is injunctive relief. If injunctive relief is granted, then the individual can get relief.

Mr. ARMSTRONG. What happens, could the Senator tell me, if an individual seeks such relief? As I understand, what they do is go to the EEOC, and the EEOC actually prosecutes the case for them. If there is a finding against the employer, that is, the EEOC prevails and gets an injunction of some kind, as I understand it, EEOC could seek and under the statute be given some compensation for attorney fees. Is that correct?

Mr. HARKIN. Would the Senator repeat that last statement?

Mr. ARMSTRONG. As I understand the way this works, if I am an employee and I think I am unfairly and illegally discriminated against—

Mr. HARKIN. On the basis of handicap—

Mr. ARMSTRONG. I go to the EEOC and tell them my story. If they agree, they actually then bring the case?

Mr. HARKIN. I am informed by the staff that in that situation, you do not get attorneys' fees.

Mr. ARMSTRONG. You do not?

Mr. HARKIN. No.

Mr. ARMSTRONG. Could you then clarify under what circumstances fees might be payable by the losing party to the party that prevails?

Mr. KENNEDY. Will the Senator yield?

Mr. HARKIN. Yes.

Mr. KENNEDY. It is private parties. This is standard language included in all civil rights. There is no variation, I understand. It is limited to the private parties, as the Senator from Iowa pointed out.

Mr. HARKIN. If I could give an example. If a private person, an individual with a handicap, let us say, was discriminated against either in employment or let us say in public accommodations, maybe once, twice, has been discriminated against and not allowed into a place because of disability, and that person went out and hired a private attorney to go to court to seek injunction against the place of business to keep them from doing that again and that person prevails, that is when they would be able to recover attorney fees.

Mr. ARMSTRONG. If the handicapped person prevails, then the person against whom they prevail should pay the attorney fees to the person who brought the case?

Mr. HARKIN. In that case, if injunctive relief is granted.

Mr. ARMSTRONG. I appreciate that. My question is, suppose the person who is being sued prevails. Can they also get attorney fees paid?

To take an example, if a person is seeking access to public accommodation, if they prevail against the provider of the accommodation, they can get the attorneys' fees.

Suppose the reverse is right. The provider of the public accommodation proves they did not violate the law. Can they get the attorney fees paid?

Mr. HARKIN. No.

Mr. KENNEDY. I wonder if the Senator would yield on this point, as a matter of practice the answer is "no." If considered by the judge to be frivolous, then there can be no award of attorney fees for the defendant and that is following the other civil rights legislation.

Mr. ARMSTRONG. Mr. President, let me point out that in a lot of analogous cases where there is good faith on both sides there is heavy litigation expense often over quite technical points of law. My concern is that the burden of bearing those attorneys' fees should not be a factor in the outcome. In other words, if it is fair that the plaintiff's get their attorney fees if they prevail, then it ought to be equally fair that the defendants get their attorney fees if they prevail whether before the EEOC or the district court or whatever.

My question is, would that not be a reasonable provision to include in here whichever side is entitled to attorney fees if they prevail that the other side be entitled?

Mr. HARKIN. As a practical matter we know the demographics of the handicapped people. Most of them are very low-income people. They do not have a lot of assets.

As I said, this was a compromise that we worked out in this bill to take out the damages that preclude the kind of actions I think the Senator sort of at least obliquely is talking about where someone might bring a case, get attorneys, go out and prosecute and go out and pay attorney fees, that kind of thing. That is not in the bill. The only thing is injunction.

You take a handicapped person as the distinguished chairman of the committee pointed out earlier, and they have enough just to get through the day. They have enough of a tough time just to keep themselves together to get through, day by day, and do not have the financial resources to go out and frivolously try to prosecute a case.

I think the instances in which, practically speaking, instances in which cases could be brought for injunctive relief would be very few and will involve egregious cases of multiple types of discrimination, probably against more than one person with a disability.

Suppose an individual with a disability goes into a place of public accommodation and is told he cannot come in or something, is that person going to go to court and get an injunction? No, they will just go someplace else. They will say, "Heck, we will not go back to that place of business again."

Practically speaking the cases you find will be the egregious cases and multiple kinds.

Mr. ARMSTRONG. Mr. President, then if that is the case then I think I would agree with the argument of the Senator from Iowa. I think the more likely instance is a little different. I think it is more likely sort of at mar-

gins at the frontier of the law where we are litigating some question as to what is reasonable, what kind of accommodation must be made to a handicapped and it might involve some very technical issues and it might not involve some poor person who is just trying to buy a cup of coffee in the neighbor coffee shop or might involve much larger actors on the Nation's stage than that.

I guess I want to think about it. I urge the Senator from Iowa to think about it.

My intention is if it is fair on one side it is fair on the other. I would be willing to take it on both sides or put in both sides.

It does not seem fair to me if someone's side is entitled to get attorney fees if they prevail the other side should not have the same right to attorney fees if they prevail.

While I appreciate what the Senator said about the plight of the handicapped, I also have firsthand knowledge of a bunch of people who get harassed by lawsuits all the time. I am not worried about General Motors. They can afford to hire a battalion of lawyers. I am worried about a typical case involving small public entities, small companies. They do not have full-time lawyers nor can hire a part-time lawyer. The lawsuit is a levy burden for them to bear. In a lot of cases they end up caving in.

I am not talking about an employment issue. I am talking about tax matters and environmental issues, and the threat of lawsuits becomes a serious problem whether a public or private entity.

I am saying we ought to equalize the law particularly so where it involves prosecution of the case by a public agency.

Although I understand the Senator's explanation that would not be a case under this bill. If it is an EEOC proceedings they cannot get compensation back for attorney fees, that is a great reassurance because it is particularly unfair if you have the government taking some private individual or some school district or some fire district or some local jurisdiction to court.

I thank the Senator for his explanation. I will send these items over.

Mr. HELMS. Will the Senator yield?

Mr. ARMSTRONG. I am happy to yield.

Mr. HELMS. I am interested in the Senator's statement that this bill is aimed at the egregious violators. Was the Senator saying that is the intent of the bill?

Mr. HARKIN. No; I am sorry. The Senator misunderstood what I said. I think in 99.9 percent of the cases where a case would be brought for injunctive relief, those would be in very egregious cases of discrimination, probably on a multiple basis.

Mr. HELMS. I would say to the Senator, once a horde of bureaucrats de-

scends upon a small businessman, then he is hooked.

Is there not some way that the Senator can make legislative history to emphasize that you do not intend for these bureaucrats to go out and look for victims—and that is what I think they would be—can you make some sort of legislative history on that point? You almost made it in what you said.

Mr. HARKIN. There is nothing in the bill that provides for any agency of Government to go out and do that kind of thing. This is left as a private right of action for a disabled person. The only provision in the bill that provides for the Attorney General of the United States in pattern and practice cases to vindicate the public interest, then the Attorney General then can go out on his own and prosecute a case. But that is the only provision in the bill. There is no other area there.

Mr. HELMS. There is going to be some agency in the Government administering this legislation if and when it is enacted and signed into law. Is the Senator telling the Senator from North Carolina that no effort by the Government will be made, short of the Justice Department, the Attorney General, to go out and look into these things? Will there not be any other agency?

Mr. HARKIN. In the employment sector, the Commissioner of EEOC would be empowered to hear cases that would be brought by a disabled person in the employment sector. And the Commissioner of EEOC could, in pattern and practice cases, also bring a case against someone in a pattern and practice case. But those are the only two.

First of all, as the Senator from Colorado pointed out, if a disabled person brought a case under employment, it would go through the administrative remedies of EEOC first and, of course, that would go to the Commissioner of EEOC. But he would not, in that kind of situation, be able to proceed on his own.

Mr. HELMS. If the distinguished Senator from Colorado would yield further to me, I would say to the Senator that on all three matters that the Senator from Iowa and the Senator from Utah and I, along with the Senator from Massachusetts, have discussed and we have been able to reach a pretty good accommodation. But I am still concerned about the tendency of this Government, the IRS for example, to focus in and say we are going to get this guy's hide. I want to be sure or as sure as I can be that this legislation is not implemented in that fashion. Is there something the Senator could say for legislative history as to the intent with respect to—well, let us call it what it is—the persecution of some small businessman.

Mr. HARKIN. I can assure the Senator that it is not this Senator's intent. I trust after reading the bill myself and the report and the colloquy that

we have had here on the floor, the amendments that have been accepted, and those are still being worked on, I want to make it perfectly clear that there is no intention in this bill whatsoever to persecuting small business people in any way whatsoever.

Let me clarify two points.

First, regarding the availability of damages as a remedy for private individuals enforcing the act, the Senator from Colorado raised this question in the context of employment and public accommodations covered by titles I and III of the act. It is true that the employment provisions of title I make available the rights and remedies of title VII of the 1964 Civil Rights Act, which provides for backpay and equitable relief. Also, under the public accommodations provisions of title III, the bill expressly limits relief to equitable remedies. However, title II of the act, covering public services, contains no such limitation. Title II of the bill makes available the rights and remedies also available under section 505 of the Rehabilitation Act, and damages remedies are available under that provision enforcing section 504 of the Rehabilitation Act and, therefore, also under title II of this bill.

Second, let me clarify the extent to which administrative remedies are available. Under title I of the bill, the EEOC is authorized to investigate complaints of discrimination in employment. Under title III of the bill, covering public accommodations, the Attorney General is authorized to investigate alleged violations of title III, and is authorized to undertake periodic reviews of compliance of covered entities. Under title II of the bill, covering public services, administrative enforcement is available to the same extent it is available under section 504 of the Rehabilitation Act.

Mr. HELMS. I thank the Senator.

Madam President, I will seek the floor if the Senator from Colorado has yielded.

Mr. BOSCHWITZ. Would the Senator from Colorado yield? I would like to ask a question.

Mr. ARMSTRONG. I would be glad to yield, but the simplest thing is for me to yield the floor and let the Senator from North Carolina and the Senator from Minnesota continue. I do yield the floor.

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado had the floor. The Chair was lenient in order that questions could be answered.

Who does seek recognition?

Mr. BOSCHWITZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. I ask the Senator from Iowa what kind of relief does someone who was injured received? Are there any kind of damages that they can receive? Let us say that a



handicapped person is discriminated against under this bill. Can that handicapped person sue for damages?

The reason I ask this question—and it is kind of in response to the question of the Senator from Colorado—the Senator from Iowa said that this was not going to generate a great deal of legal business. Most of the stuff we pass around here—and the Senator from Colorado and the Senator from North Carolina and I are three of the nonlawyers in the place—but most of what we do around here seems to generate a lot of legal business. My question is: Is there any kind of court relief? Is there any kind of damages that a person can sue for under this bill?

Mr. HARKIN. No. I assure the Senator from Minnesota the whole nature of the compromise that was worked out with the administration provides that there are no damages in this bill. There was in the initial draft. There is not in here. In the employment section, there is only injunctive relief and back pay.

Mr. BOSCHWITZ. In the event it was an employer—

Mr. HARKIN. That is right.

Mr. BOSCHWITZ. But that would not apply to a person who was applying—

Mr. HARKIN. No. In the public accommodation title it is only injunctive relief.

Mr. BOSCHWITZ. So that we should not expect under this legislation that people are going to go out and get a lawyer and say I will take a third of whatever we recover because this legislation would not do that.

Mr. HARKIN. It would not.

Mr. BOSCHWITZ. I thank the Senator and I thank the Senator from North Carolina.

#### AMENDMENT NO. 714

(Purpose: To amend sections 304 and 305 relating to the accessibility of over-the-road buses to individuals with disabilities)

Mr. HOLLINGS. Madam President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. HOLLINGS), for himself and Mr. CHAFFET, proposes an amendment numbered 714.

Mr. HOLLINGS. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(1) Amend section 304(b)(4) by inserting "except as provided in section 305(d)," immediately after "Other providers,"; by striking "6 years" and inserting in lieu thereof "7 years"; and by striking "5 years" and inserting in lieu thereof "6 years".

(2) Amend section 305(a) by striking "Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792)" and inserting in lieu thereof "Office of Technology Assessment".

(3) Amend section 305(c) to read as follows:

"(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

"(1) members selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers;

"(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

"(3) member selected for their technical expertise on issues included in the study.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3)."

(4) Amend section 305(d) by striking "Board," and all that follows and inserting in lieu thereof "Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and the Congress within 36 months after the date of enactment of this Act. If the President, after reviewing the study, determines that compliance with the requirements of section 304(a) on or before the applicable deadlines specified in section 304(b)(4) will result in a significant reduction in intercity bus service, each such deadline shall be extended by one additional year."

(5) Amend section 305 by adding at the end the following new subsection:

"(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d)."

Mr. HOLLINGS. Madam President, this amendment has been worked out. I think on both sides of the aisle.

Madam President, I appreciate this opportunity to offer an amendment to S. 933, the Americans with Disabilities Act of 1989, which relates to the study required by this bill on the access needs of individuals with disabilities to intercity buses.

Currently, this study is to be conducted by the Architectural and Transportation Barriers Compliance Board. My amendment seeks to change the author of this study from the Architectural and Transportation Barriers Compliance Board to the Office of Technology Assessment [OTA]. OTA has a proven track record in studying issues related to technology and in helping to develop consensus on critical issues such as this. In addition, OTA can assemble the experts necessary to address both aspects of the study mandated by S. 933.

This is a critical study which is to address the specific problems and costs that may be associated with the requirement in the bill that new intercity buses be readily accessible to and

usable by individuals with disabilities, including individuals who use wheelchairs.

In addition to studying the access needs of individuals with disabilities to over-the-road buses and the most effective methods for making these buses accessible, the study is to include an examination of the impact of accessibility requirements on the continuation of intercity bus service, in particular the impact on rural service. I believe OTA is best equipped to perform this type of economic analysis which is critical to making a determination of whether accessibility requirements in this legislation might impose so great a burden on private bus companies as to have the unintended effect of hastening the deterioration of private bus service, and in particular, rural service.

A second component of my amendment would increase by 1 additional year, the timeframe for compliance of the requirement in the bill that within 6 years after enactment for small providers—to be defined by the Department of Transportation—and 5 years for other providers, all new over-the-road buses purchased or leased to provide public transportation services must be accessible to and usable by individuals with disabilities. These numbers would change to 7 years and 6 years, respectively.

I believe it is important that the bus industry as well as the Congress have at least 3 years between the time the study is completed and the date by which the lease/purchase requirements would become effective to assess the findings of the study.

The final component of my amendment would provide for another 1-year delay in implementing the lease/purchase requirement if the President finds, after reviewing the OTA report, that a significant amount of intercity bus service would be endangered if providers were compelled to comply with the accessibility requirement. This additional year would provide more time for Congress, if it deemed it necessary, to propose additional legislation to address these concerns.

The economic health of the intercity bus industry and the continuation of intercity bus service are both of vital importance to me and to the Commerce Committee, which I chair. While I am a cosponsor of S. 933, and applaud the members of the Labor Committee for their commitment and diligence in crafting this comprehensive legislation, it is with the above concerns in mind that I urge my colleagues to support this amendment.

I would try to answer any questions.

I thank both sides, Senator Dole and Senator HARKIN, and particularly Senator KENNEDY, for their understanding of the concerns that we have had in the Commerce Committee.

Mr. KENNEDY. Mr. President, I want to say that I will support the amendment of the Senator from

handicapped person is discriminated against under this bill. Can that handicapped person sue for damages?

The reason I ask this question—and it is kind of in response to the question of the Senator from Colorado—the Senator from Iowa said that this was not going to generate a great deal of legal business. Most of the stuff we pass around here—and the Senator from Colorado and the Senator from North Carolina and I are three of the nonlawyers in the place—but most of what we do around here seems to generate a lot of legal business. My question is: Is there any kind of court relief? Is there any kind of damages that a person can sue for under this bill?

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Mr. BOSCHWITZ. So that we should not expect under this legislation that people are going to go out and get a lawyer and say I will take a third of whatever we recover because this legislation would not do that.

Mr. HARKIN. It would not.

Mr. BOSCHWITZ. I thank the Senator and I thank the Senator from North Carolina.

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The PRESIDING OFFICER. Without objection, it is so ordered.

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Madam President, I appreciate this opportunity to offer an amendment to S. 933, the Americans with Disabilities Act of 1989, which relates to the study required by this bill on the access needs of individuals with disabilities to intercity buses.

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The final component of my amendment would provide for another 1-year delay in implementing the lease/purchase requirement if the President finds, after reviewing the OTA report, that a significant amount of intercity bus service would be endangered if providers were compelled to comply with the accessibility requirement. This additional year would provide more time for Congress, if it deemed it necessary, to propose additional legislation to address these concerns.

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I would try to answer any questions.

I thank both sides, Senator Dole and Senator HARKIN, and particularly Senator KENNEDY, for their understanding of the concerns that we have had in the Commerce Committee.

Mr. KENNEDY. Mr. President, I want to say that I will support the amendment of the Senator from

South Carolina. I hope that the membership will accept it.

I had felt, quite frankly, that the committee substitute in the areas of transportation, which is a key element in this whole legislation, provided for a period of study but also provided for the implementation in a 5-year period, in terms of private intercity buses, and 6 years for small providers. This amendment extends that time by 1 year.

But what it will do is it will permit what I consider to be the best technical agency that exists, really, in our country, the OTA, to do the very technical work in terms of the technical complexities for transportation. It then permits the Architectural and Transportation Barriers Compliance and Review Board to comment on that particular study.

I have complete confidence, as I know the Senator from South Carolina has, that the OTA really is perhaps the best agency to be able to make this judgment. I know he and I are always reluctant to mandate studies upon that body. But I think given the uniqueness of this particular challenge, and given their expertise, that this is appropriate.

My own belief, having been at the hearings and studied the issue, is with this kind of study we are going to find that concerns by the bus companies are going to be dramatically eased.

The new technologies which are coming on line and which are being utilized, for example, in a number of the European countries, and some new technologies in Denver, CO, and Johnstown, PA, indicate that many of the concerns which had been expressed previously have not been a problem. I think that is going to be demonstrated again with this bill.

So, though I felt that what is in the committee substitute was a preferable way of doing this, I understand the concerns. I am very hopeful that in the interim, between now and those 6 and 7 years, that we are going to be able to demonstrate that the kinds of objective that we had hoped to achieve in the legislation are going to be easy to accomplish and that the companies themselves were not going to wait until the deadline but will take the opportunity to buy accessible vehicles sooner. That is my own firm belief, having talked to some of those in the transportation industry who are also on the cutting edge of technology.

The Senator has worked on this issue. I know the members of the Commerce Committee have special expertise and interest in these areas of transportation. It seems to me this is a satisfactory solution.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Madam President, I want to say I think the amendment by the Senator from South Carolina makes a lot of sense and I would like to be added as a cosponsor, if I might.

Mr. HOLLINGS. I appreciate it.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. I think he is directing the study to the proper group and furthermore, he is dealing with a problem that is a real one.

I am familiar in our State with relatively small bus companies, privately owned, that go intercity, and they are deeply concerned.

The technology, I think, is going to astonish us with the developments that take place in the next several years. I cannot help but believe that we are going to see the brains of America turn toward developing ramps and lifts that are far less expensive than those currently existing, and far more efficient.

But I do think we have to give them a chance. Therefore, I think the amendment of the Senator from South Carolina is a good one. I believe that we want these privately owned bus companies to continue. They are providing the service, and with the decline of rail service in so many instances and certainly with the expense that is going to come about with air transportation, in many instances, or no air transportation at all, we are dependent upon these intercity buses. So we want them to succeed. And we also want to them to be able to provide for the handicapped in a sensible fashion.

I think it is a good amendment and hope it is accepted.

Mr. HOLLINGS. Madam President, I thank my distinguished colleague from Rhode Island. I appreciate very much his support and comments.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. WIRTH. Madam President, I rise in support of this bill as it was reported out of committee. It is a good bill, solidly written, and one that will finally bring long-deserved civil rights to those among us with physical or mental impairments. I am proud to be a cosponsor of S. 933.

The Americans With Disabilities Act of 1989 will provide a long-needed comprehensive ban against disability-based discrimination, which is still a pervasive problem across the United States. The ADA is based, in part, on the successful experiences of some States and localities, including Colorado, which have made great progress against particular aspects of disability discrimination.

I am proud of what the State of Colorado, particularly the Denver area, has accomplished in both transportation and public accommodations. This bill is crucial so that people nationwide can receive the same protections.

In Denver, we recognize that public transportation is essential to a true integration of people with disabilities into our community, as well as to successful employment. The Denver Regional Transportation District has long had a commitment to accessible public transit, and we know that it is reasonable, regardless of climate, to

require that newly purchased buses be equipped with lifts.

Equally important is access to private transportation to facilitate traveling from city to city. It is very important that both intracity buses and intercity over-the-road coaches be accessible to people with disabilities, whose travel needs do not stop 5 miles from their houses anymore than yours or mine. I support both requirements fully.

The transit industry is concerned over what it sees as financial drawbacks to making private intercity service accessible, but an objective look at the facts amply demonstrates that there are not genuine obstacles.

The bus industry says that providing accessibility to an over-the-road coach costs an extra \$35,000, takes up a third of the baggage space, and results in a loss of 11 or 12 seats. The truth is, however, that accessible over-the-road coaches have been and are manufactured which do not pose such problems. The Stewart & Stevenson Power Co. of Commerce City, CO, outfits buses with little or no loss of passenger or baggage space. These are the ones we use in Denver. In the Denver area, 17 accessible coaches are successfully operating today, with more coaches on order, for which the purchase price is only an extra \$11,000—not \$35,000. On these buses the lifts take up no baggage space—not a third—and result in the loss of only one seat—not 11 or 12. Moreover, maintaining these lifts has proven extremely cheap, and we have seen that as refinements are made to the design of the buses, the cost is going down.

It is simply a distortion for the over-the-road coach industry to pretend that this technology does not exist, or to deny that technology in general cannot adapt. When a market is created for accessible over-the-road coaches—which it will be by this bill—companies will race to outdo each other for the chance to offer evermore inexpensive accessible coaches.

The Americans with Disabilities Act already includes a special exemption to assist this specific industry in the transition to nondiscrimination. While publicly funded transit entities have 30 days to stop purchasing inaccessible vehicles, and most private entities have 2 years, large private intercity providers are given 5 years, and small ones are given 6 years. This is more than ample time to gear up and to refine methods for compliance.

In addition, the act requires a study to decide the best method for making intercity service accessible and describes how the study will be carried out. The purpose of this study is to decide how the service can best be made accessible, not whether it should be made accessible. The intention of the Americans with Disabilities Act is that newly purchased vehicles will provide accessible intercity service

within the time limits specified, in order to comply with the law.

It is not only fair and just, but reasonable from a fiscal perspective, to end disability discrimination. Let it be this year that our Nation takes a firm stand against one of the last bastions of intolerance: the one which besieges 43 million Americans, our largest minority. Let us pass a comprehensive ban against unnecessary barriers, and facilitate an end to segregation and exclusion for our disabled citizens. Let us enact the Americans with Disabilities Act of 1989.

I think this is a good amendment. I do not think the problem was as grave as was suggested earlier. I just want to cite very briefly the experience of the regional transportation district in Colorado.

In the Denver metropolitan area, it has already done a great deal of retrofitting of buses. They have not found this. We have been working on this issue for 15 years. They have not found this to be the kind of onerous problem that was suggested 15 years ago in Denver. The adaptation of these buses has been done and it has been done at a very reasonable price.

The comments by the distinguished Senator from Rhode Island are exactly correct. The ingenuity is moving out and moving out very smartly and I think we will find this kind of access to the handicapped of transportation is going to work all across the country as it is now working in Denver.

I want to thank the distinguished chairman, Senator HARKIN, for the very good job he has done to work this out, and I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I want to rise also in support of the amendment and to say that we are going to accept the amendment. Obviously, we have worked this out with the distinguished Senator from South Carolina.

I share with the Senator from South Carolina, and I know a number of other Senators here, a real concern about the effect of this bill on intercity bus transportation. I spent about an hour in my office the other day with the president of Greyhound and, quite frankly, he raised a lot of concerns in my mind.

I did not mean to single out that company but that company serves a lot of small towns in my State and I am sure in South Carolina and everywhere else.

The president of that company pointed out some real concerns which I took to heart.

I have a great concern what effect this might have on intercity bus service, especially in small towns and communities in rural America. So, I have been trying to find some middle ground, some way of balancing these interests, the legitimate interests of trying to get from this point to some

point in the future when we do have buses that are accessible but doing it in a way that does not put an onerous burden on these bus companies that is going to drive them out of business or make them take away some of the service they give to small towns and communities.

So I believe the amendment that the Senator from South Carolina has crafted strikes that balance, and I want to also reassure those bus companies, the large ones and the small ones—we have some in our State, two small bus companies—that we are going to monitor this very closely. I believe the Senator from South Carolina has correctly identified the agency that should do the study and with the residual input from the architectural barriers review committee.

He is right in having the OTA do the study. I want to assure those bus companies, and I am sure the Senator from South Carolina would assure they will also, that we are going to monitor this as we go along. If we see any kind of harmful impact out there, we are going to take remedial action. We are going to do something here to make sure that there is no deregulation of those bus services to those small towns and communities in our States. I believe this amendment has really balanced those interested and struck a good middle ground. I want to compliment the Senator from South Carolina for coming up with this amendment, and we are not only more than ready, we are very happy to accept it.

Mr. HOLLINGS. I thank the distinguished Senator from Iowa. Madam President, I urge the adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 714) was agreed to.

Mr. HOLLINGS. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HARKIN. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HOLLINGS. I thank the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Madam President, we only have 7 or 8 minutes before I understand there is going to be a vote on the legislative appropriations bill; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BUMPERS. I want to engage the distinguished floor manager in a colloquy involving some things that may have already been clarified, but they were not clarified in my mind. First of all, there is a provision in here that says, for example, all buses purchased within 30 days or after 30 days from the enactment of this provision must meet these standards.

Does that mean that any buses on order at that time would not be included in that? Is that correct?

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. So that only if you issue a purchase order for buses after 30 days would you have to put the lifts on, for example.

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. And have a modified rest room on it, and so on; is that correct?

Mr. HARKIN. No. Let me clarify for the Senator. We are only talking about public transit.

Mr. BUMPERS. I understand that. We are talking about public transportation.

Mr. HARKIN. The other ones we are talking about were private transportation.

Mr. BUMPERS. We have two classifications here as I understand it. The criteria of this bill has always been applicable to public transportation where Federal funds were involved, is that not correct, under the Rehabilitation Act?

Mr. HARKIN. Yes; the Senator is correct.

Mr. BUMPERS. What we are doing now is extending this to all public accommodations; that is, owned by cities, counties, States, and so on, whether Federal funds are involved or not, as well as private intercity carriers.

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. With respect to public transit, the bill provides that people in those categories provide buses 30 days after the enactment of this bill must order buses that come into compliance with the bill; is that correct?

Mr. HARKIN. I must say to the Senator, only buses that are purchased by public transit authorities and used for fixed route public transportation.

Mr. BUMPERS. I am not talking about Greyhound. That is a privately owned company. We are talking about city buses and publicly owned buses, owned by the State, county, city, and so on.

Mr. HARKIN. Yes.

Mr. BUMPERS. In that provision, does not this 30-day provision apply to them?

Mr. HARKIN. Yes; it does.

Mr. BUMPERS. We will come back to the privately owned bus companies in a moment. So my question is, and I am trying to clarify the record, I do not want to be argumentative, a lot of people want to know the answers to these things and the record may be silent if we do not clarify it. The question is if you have issued a purchase order for a bus prior to 30 days after the enactment of this bill, you will not be required to make that bus comply with the terms of this bill?

Mr. HARKIN. If I might read from the report to the bill on page 47.

Mr. BUMPERS. Page what?

Mr. HARKIN. Page 47 of the report.

Mr. BUMPERS. I am with you.

Mr. HARKIN. Down toward the bottom of the page:

The term "new" means buses which are offered for first sale or lease after manufacture without any prior use. Buses for which a solicitation is made within 90 days after enactment of this legislation are not subject to the accessibility requirement and thus are not required to have wheelchair lift equipment.

Mr. BUMPERS. That part of the report now answers my question, I say to the Senator. If they get a fleet of buses delivered to them within that 90-day period, they are not obligated to retrofit them or do anything else to them.

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. When it comes to the regulations which probably will be written in the area of public accommodations—we are talking about hotels, restaurants, so on—the Justice Department, as I understand it, will enforce that; is that correct?

Mr. HARKIN. Excuse me, what will the Justice Department enforce?

Mr. BUMPERS. Let me ask the question. Who will enforce this law regarding public accommodations for the disabled—hotels, restaurants, grocery stores, Wal-Mart, all those?

Mr. HARKIN. There will be two entities: individuals with disabilities who at some point would want to bring an injunctive case, a case for injunction against a business or the Attorney General in a pattern and practice case are the only two that would be enforcing this.

Mr. BUMPERS. The Attorney General and who?

Mr. HARKIN. Any private individual.

Mr. BUMPERS. A private individual can sue, that is true. We can assume, can we not, that the Justice Department will write the regulations to implement the terms of this bill?

Mr. HARKIN. That is true.

Mr. BUMPERS. I assume DOT will write the regulations for the public transportation part.

Mr. HARKIN. I think the Senator is correct.

Mr. BUMPERS. We have this provision in here which really causes me more problems than anything else. I am going to vote for the bill. I am a co-sponsor. I am also chairman of the Senate Small Business Committee. However, this term "readily achievable" is a very, very indefinite term. My question is this: When I look at the report and I look at that term, who will decide what is readily achievable? You have some criteria set out here in the bill and in the committee report, but it seems to me that readily achievable is like beauty; this is going to wind up being in the eye of the beholder. For example, in looking over the legislative bulletin of the Democratic Policy Committee, and I do not

mind sharing this with our friends on the other side of the aisle, it says on readily achievable, "factors to be considered in determining whether an action is readily achievable include, one, the overall size of the covered entity, such as the number of employees, number and type of facilities and the budget size; two, the type of operation, including the composition and structure of the entity and, three, the nature and cost of the action needed."

I say to the Senator, if you will agree with me that when you have this kind of criteria out here, that these can only be considered a partial list of factors to be considered. It is not considered to be an exhaustive list, is it, of what is readily achievable? Let me give you an example. If I am in the hardware and furniture business, which I was once, and somebody says, "Your business does not comport with this bill and with the regulations promulgated thereunder by the Department of Justice. Now that person can bring a suit against me at that time, can they not?"

Mr. HARKIN. A qualified person, yes, could bring a suit against you.

Mr. BUMPERS. If somebody comes into my place of business and looks around and says, "Look, I cannot use your restroom, I had to get my brother to help me up the steps"—

The PRESIDING OFFICER (Mr. BRASS). The hour of 7 o'clock has arrived. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I understand under the previous order the vote on the legislative branch appropriations bill is to occur at 7 p.m.; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. MITCHELL. Mr. President, I ask unanimous consent that I be allowed to address the Senate for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, we are near completion of this bill. If any Senator has an amendment that he or she wishes to offer, that Senator should be prepared to do so immediately after the vote that is now about to occur on the legislative branch appropriations bill, or if any Senator wishes to speak on the subject of the disabilities bill, that Senator should be prepared to do so, so that we can complete action if all amendments are offered and disposed of this evening.

So I ask all Senators, those who wish to address the subject matter of this bill, or who wish to offer an amendment, or both, be prepared to do so immediately following the completion of the vote on the legislative branch appropriations bill.

I thank all Senators for their courtesy.

Mr. BUMPERS addressed the Chair.

Mr. MITCHELL. If Senators are prepared to proceed, this will facilitate our disposition of this matter finally.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. I thank the Senator.

Mr. KENNEDY. Will the Senator yield?

Mr. MITCHELL. Yes.

Mr. KENNEDY. Without cutting off the Senator from Arkansas, at the termination of the vote the Senator from North Carolina—we have been working with him for about 5 hours on his particular amendments. I think we have an agreement. It should not take long. I would like to see the vote process move forward and to accommodate the Senator from North Carolina. I wonder if that would be appropriate.

Mr. BUMPERS. Mr. President, I do not know that it makes a lot of difference whether the Senator from North Carolina goes first or second. I want to accommodate the managers. If they prefer to get that amendment disposed of and have an agreement, then I would like to get recognized immediately after that amendment. Either way.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I would prefer for Senator BUMPERS to proceed with his colloquy because he had a train of thought going and I am going to be here anyhow.

Mr. BUMPERS. I am, too. So, with that understanding, I will just proceed with this colloquy. As I say, 10 minutes is about all I want and it might not even take that long.

Mr. HELMS. Mr. President, I would prefer to say that the staff of Senator KENNEDY and others are working with my staff right now and I think it will be completed by that time.

Mr. MITCHELL. I thank the Chair.

The PRESIDING OFFICER. The 1 minute of the majority leader has expired.

Mr. BUMPERS addressed the Chair. The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, if I can have the attention of the distinguished floor manager, I will try to be as brief as possible. I cannot be brief unless I have the attention of the floor manager.

Mr. HARKIN. I apologize to the Senator from Arkansas. I was covering a couple of other things. I will be glad to respond as best I can to the questions.

Mr. BUMPERS. Mr. President, to continue the colloquy before we were interrupted by the vote, let me ask and clarify something before we go on. Is it correct to say that one who is aggrieved by failure of anybody to comply with this act must exhaust, as we lawyers say, his or her administrative remedies before they proceed to file suit.

Mr. HARKIN. That is affirmative.

Mr. BUMPERS. In that connection, Senator, if somebody who is disabled goes into a place of business, and we



will just use this hypothetical example, and they say, "You do not have a ramp out here and I am in a wheelchair and I just went to the restroom here and it is not suitable for wheelchair occupants," are they permitted at that point to bring an action administratively against the owner of that business, or do they have to give the owner some notice prior to pursuing a legal remedy?

Mr. HARKIN. First of all, Senator, there would be no administrative remedy in that kind of a situation. The administrative remedies only apply in the employment situation. In the situation you are talking about—

Mr. BUMPERS. That is true. So one does not have to pursue or exhaust his administrative remedies in title III if it is title III that is the public accommodations.

Mr. HARKIN. Title III.

Mr. BUMPERS. Title II is employment.

Mr. HARKIN. That is correct.

Mr. BUMPERS. That has the small business exemption also and it is also in title II where you must exhaust your administrative remedies before you go to court?

Mr. HARKIN. Title I.

Mr. BUMPERS. What title is it that covers public accommodations, restaurants and—title III? In that case, the same example, if a person feels aggrieved because a business is not up to the standards of the bill, according to someone who is disabled, what do they do? Do they write the Attorney General or go down to the courthouse and file a lawsuit?

Mr. HARKIN. If the Senator will permit me, I think the practical outcome of a situation like that would be that a handicapped person would talk to the owner of the business and say, "Look, I would like to come to your establishment, I would like to eat or shop here or buy things here. But quite frankly I cannot get into your business, I cannot use your facilities because they are nonaccessible, and we would like you to make some changes so it can be accessible."

Mr. BUMPERS. That is all well and good, but is there any prohibition against that person filing a lawsuit at that time because they are not in compliance, indeed, in violation of this bill?

Mr. HARKIN. I would have to answer to the Senator that that would depend upon the kind of violation and whether or not the provisions of the bill that outline what readily achievable means, easily accomplishable, without much difficulty or expense. Now, if the Senator is talking about a business that employs several hundred people, that may not have a ramp or something like that, that is nonaccessible, that is one thing. If the Senator is talking about a small business, that mom and pop establishment, that is quite a different story.

Mr. BUMPERS. Senator, what I want to know is, does the bill distin-

guish between those two as far as remedies are concerned? There is no distinction between somebody with 3 employees and 30,000 employees in this bill.

Mr. HARKIN. Turning to injunctive relief, the Senator is right, there is no difference. But in terms of what the court would find based upon the legislation, based upon the record that we have made and the report and the regulations that will be promulgated, then the court would decide whether or not what the plaintiff was seeking in that case is readily achievable, easily accomplishable, carried out without much expense, in accordance with the size of the business.

Mr. BUMPERS. But my question is this: Is there anything in the bill that would preclude any person who feels aggrieved by the lack of accessibility to a mom and pop grocery store with three employees from immediately going to the courthouse and filing a lawsuit?

Mr. HARKIN. First of all, I will say to the Senator, and let me repeat again and again and again, there is no provision for damages in this bill.

Mr. BUMPERS. Wait a minute.

Mr. HARKIN. The aggrieved party cannot go down and sue for damages.

Mr. BUMPERS. Is the Senator absolutely sure of that; in both title I and title III, you cannot sue for damages?

Mr. HARKIN. Absolutely; that is out of the bill.

Mr. HATCH. Could I add something, if that is possible, to the distinguished Senator from Arkansas? There is no right to sue for damages on a private basis?

Mr. HARKIN. That is right.

Mr. HATCH. The Attorney General can sue to implement the civil penalty damages.

Mr. HARKIN. In pattern and practice cases.

Mr. HATCH. That is right. The Attorney General can also ask for monetary damages, but it is limited to the Attorney General.

Mr. HARKIN. That is right.

Mr. BUMPERS. So the Attorney General would have to give permission before you could sue for damages?

Mr. HATCH. No; the Attorney General could sue for damages.

Mr. BUMPERS. But not an individual?

Mr. HARKIN. Let me make this clear. The Attorney General in a pattern and practice case can find a violation, and can then levy a fine—it is not damages—levy a fine. He can also request monetary damages—not punitive damages, only monetary damages—on behalf of the aggrieved person, whatever monetary damages may have accrued to that person. That is only the Attorney General who can do that.

Mr. BUMPERS. The term "readily achievable," does that apply to both transportation and public accommodations? You have some criteria set out in the report as to what is considered to be readily achievable.

My question is, Does that term apply to both title I and title III; public transportation and public accommodations?

Mr. HARKIN. No. It only applies in title III, I would respond to the Senator. It does not apply to transportation.

Mr. BUMPERS. Now, I understand. "Readily accessible" applies to transportation; does it not?

Mr. HARKIN. I does apply.

Mr. BUMPERS. Readily achievable in title III applies to public accommodations. Going back to readily accessible, we discussed a moment ago the question of buses, and the Senator from Iowa has said that any buses owned by a public entity prior to 30 days after enactment of this bill would not have to be retrofitted.

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. If I am a disabled person and I complain about a bus not having a chair lift for my wheelchair, my question is, what does readily accessible mean? Does it mean that the bus company is obligated to make that bus readily accessible to me?

Mr. HARKIN. If the Senator is talking about old buses and buses which they have purchased or put in a purchase order for prior to 30 days after enactment of this bill—

Mr. BUMPERS. The answer is "No."

Mr. HARKIN. The answer is "No."

Mr. BUMPERS. I think this is a very important point. I want to be sure we are right on that. The Senator is telling me that even the term "readily accessible" does not apply to any bus purchased prior to 30 days after the enactment of this bill.

Mr. HARKIN. That is absolutely correct.

Mr. BUMPERS. That is what the colloquy is all about. I want to get things like that clarified.

Mr. HARKIN. I understand.

Mr. BUMPERS. Now when it comes to the regulations, for example, to implement title III of this bill, the public accommodations part, you have this question of "readily achievable." You have this rather indefinite term "readily achievable" in here, you are saying that the size of the building, the number of employees, the cost of all those things go into determining whether it is readily achievable or not. Is that correct?

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. So readily achievable is a term that I am not familiar with as a term of art. I practiced law for 20 years before I got into this business and I never heard that term before. So this is a new term that is in this bill, and "readily achievable," that sort of is like beauty. It is in the eye of the beholder, is it not?

Mr. HARKIN. Would the Senator repeat the question?

Mr. BUMPERS. I said the term "readily achievable" is like the term

beauty. Beauty is in the eye of the beholder and readily achievable means that some judge says it means, does it not?

Mr. HARKIN. Again, if I could direct the Senator's attention to a further reading on page 65 of the report.

Mr. BUMPERS. Page 65 of the committee report.

Mr. HARKIN. Of the report, I think the Senator was reading from part of that earlier in terms of readily achievable.

Mr. BUMPERS. I read that. We are in agreement on this: You have some criteria set out here.

Mr. HARKIN. I do not know if the Senator read on down to the end of this page and clear onto the next page because it further defines what readily achievable means and what it does not mean.

"It is important to note—" I would read on for the Senator—"that readily achievable is a significantly lesser or lower standard than the 'undue burden' standards used in this title and the 'undue hardship' standard used in title I." "The concept of readily achievable should not be confused with the phraseology of 'readily accessible.' " "The phrase 'readily accessible' to and usable by individuals with disabilities' focus on the person with a disability." On the other page, page 66:

Readily achievable, on the other hand focuses on the business operator and addresses the degree of ease or difficulty of the business operator in removing a barrier, if barrier removal cannot be accomplished readily, then it is not required.

I can read the whole thing there.

Mr. BUMPERS. Is it fair to say then that if there is a barrier that cannot be readily removed, that its removal cannot be readily achieved, then that operator is not obligated to furnish access to his place of business to a handicapped person? Is that correct?

Mr. HARKIN. Just a moment.

The Senator is correct, unless the operator of that establishment can make the services readily available without undue burden.

Mr. BUMPERS. It seems to be that the Senator is giving with the right hand and taking away with the left.

Mr. HARKIN. No, it is the same. What I am saying is if you have a barrier that cannot be removed, readily achievable, cannot be removed, the operator of that establishment does not have to do anything else unless they can provide the services under the same criteria.

Mr. BUMPERS. What you are saying then is that even if he cannot readily achieve a removal of the barrier, he still has to provide access to the handicapped person through some other method.

Mr. HARKIN. If it is readily achievable.

Mr. HATCH. That is right.

Mr. HARKIN. If it is readily achievable.

Mr. BUMPERS. I am getting confused here. Let us walk through this so I understand what we are talking about.

Mr. HARKIN. Maybe I could read on to page 66 to the Senator.

Mr. BUMPERS. All right.

Mr. HARKIN [reading].

...the legislation specifies that where an entity can demonstrate that removal of a barrier is not readily achievable, discrimination includes a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable.

With respect to the adoption of alternative methods, examples of "readily achievable" include: coming to the door to receive or return drycleaning; allowing a disabled patron to be served beverages at a table even though nondisabled persons having only drinks are required to drink at the inaccessible bar; providing assistance to retrieve items in an inaccessible location; and rotating movies between the first floor accessible theater and a comparable second floor inaccessible theater.

Those are the kinds of examples we included in there to show what we mean by readily achievable.

Mr. BUMPERS. Let's walk through this example. This may seem a bit bizarre, so let me clarify what I believe to be a contradiction in this bill.

Let us assume that you have 40 steps in front of a business. I used to attend the First Methodist Church in Charleston, AR, and it had 30 steps. It never occurred to me until my father's funeral that this was a big problem to a lot of people.

Let us assume you have that and let us assume that it is determined that removal of that barrier would not be readily achievable under the criteria of this bill.

Now what I understand you to be saying, I say to the Senator, is even though it is determined that it is not readily achievable to provide access under those conditions, that there must be some alternative method designed. Maybe the regulations of the Justice Department say you have to have a ramp, which is in this case would be, we will say, 20 feet high and 75 feet long. But my point is this: If it is determined that it is not readily achievable because of its costs you are saying that he is still obligated to provide services through some other alternative if that is readily achievable.

Mr. HARKIN. The Senator is correct.

Mr. BUMPERS. Well, it is readily achievable or it is not.

Mr. HARKIN. No, access may be readily achievable or may not. The providing of services again may be readily achievable or it may not. As I said, I gave an example. For example, let us say there are 3 or 4 or 5 steps going up to a dry cleaning establishment, the mom and pop operation on the corner. To put a ramp up and remove the steps might come as an undue amount. But if a handicapped person came to the door and said, I

want to leave my dry cleaning and go to the door, fine.

Mr. BUMPERS. That is all well and good. That is an easy example. The one I gave you is not so easy. I am not talking about where somebody who can drive up to the drive-in window and come up to the first step and hand in their dry cleaning. I am talking about a case where the cost of providing access may very well cost as much as that businessman is going to take in in the next 30 days.

Mr. HARKIN. Well then, if that is not really achievable he would not have to do it.

Mr. BUMPERS. But you are telling me if that is not readily achievable then he must provide similar services if it is readily achievable.

Mr. HARKIN. If the service is readily achievable.

Mr. BUMPERS. Let us go further. Let us assume there is no alternative that is readily achievable. Then what happens?

Mr. HARKIN. He has no obligation.

Mr. BUMPERS. He is free.

Mr. HARKIN. Yes.

Mr. BUMPERS. So the disabled just do not have access to his place of business, is that correct?

Mr. HARKIN. That is correct.

Mr. BUMPERS. That is all I was trying to get at.

Let me ask you another question. I do not want to belabor this. I am for the bill. I hate to get personal. My daughter was paralyzed in a wheelchair for 6 months, and it sensitized me to something I would never have been nearly as sensitive to if I had not had that experience. So I am going to vote for the bill, and I must tell you I want these people to have access. I will do anything in the world to accommodate them. But as a former small businessman and chairman of the Small Business Committee of the U.S. Senate, I am concerned. I am concerned about what I think may put some people out of business. And the reason we are here debating this bill, the reason we are talking about it, is that we are obligated here to weigh the interest of the rights of the handicapped, which ought to be total, against what is obviously going to be quite a burden for a lot of small business people.

And what I am trying to do is to set this record straight so that these small business people who do not want to pay a penalty and who want to come into compliance have some understanding of what their rights are.

Now my question is this: going back to the same illustration. Somebody is going to write some regulations and say, for example, you will provide a ramp for wheelchair people if the building is less than 3 stories high. Somebody is going to go to have to make some kind of a regulation about what you do to provide accessibility and what you do not do. And I am assuming that the Justice Department is

going to write some regulations. Is that a fair statement?

Mr. HARKIN. That is a fair and accurate statement.

Mr. BUMPERS. OK. Let us assume that some businessman gets out there and he says, "Look, this is a crazy regulation. I know that the Senator from Florida and the Senator from Arkansas did not take leave of their senses, and they did not intend for me to have to comply with such an onerous burden. It would bankrupt me if I did it."

But you know what the administrative law is on regulations, do you not? The courts almost always defer to the "expertise" of the regulation writers. In hundreds of cases where the court writes a decision, the judge says, "I think this regulation is crazy, too, and if it were a case of first impression for me, I would rule it invalid. But the case law is that we always defer to the expertise of the regulation writer."

So you have got this same old problem that we have hassled with for years in the business community, where they feel so terribly put upon when they find an onerous regulation and then find that the court feels an obligation to defer to the regulation writers. Is that not correct?

Mr. HARKIN. I want to respond to the Senator by saying that I am every bit as sensitive to the plight of small businesses as the Senator is. I have never been a small business operator, but the district I used to represent when I was in the other body and the State that I now represent is a State of many small businesses. That is basically the backbone of our State's economy. Many of my relatives were small business operators in the State of Iowa. I can assure the Senator that this Senator paid due diligence to every aspect of this bill as it was drafted, redrafted, negotiated, hammered out, compromised, amended to make sure that the burden on small businesses is modest, as we say in the legal profession, to make sure that we strike a balance. Again, I would just tell the Senator that we were basically faced with two options. One, we could say, do not do anything. Well, what does that say to handicapped persons—do not do anything? Well, that is not acceptable. I am sure the Senator would not want to stick to that—do not do anything, leave things as they are.

On the other hand, we could have gone completely the other way saying, retrofit everything, make everything accessible, no exceptions. That would have bankrupted the small businessman. We did not want to do that. So we crafted this language with this readily achievable standard, with the standards that we put in it to ensure that the regulation writers from the Justice Department cannot go off on some tangent and write regulations that would be onerous, burdensome, and disastrous to small businesses.

I can assure the Senator that this Senator, because I am so interested in

this area and because of my interest in small business—and I serve on the distinguished Senator's Small Business Committee—that I am going to be paying very close attention to this as these regulations come out.

Now, again, we are going to have a chance to review those here. We will get a chance to review those. And we are going to make sure that they follow our intent in these regulations. When they promulgate or propose regulations, the business community is going to get them. They are going to be able to talk to us and let us know whether or not those are burdensome, whether or not they are going to run them out of business. At that point we can go in and we can make the necessary changes. The Senator knows the regulatory process just as well as I do and the way they promulgate regulations.

So I just want to state that this is not the end of it. It is not the end of our oversight responsibilities either. So when they promulgate those regulations, and put them out for review and comment, we are the ones that are going to look at them to make sure they are responsible regulations.

Mr. BUMPERS. Senator, why are school buses exempt from the public transportation part of this?

Mr. KENNEDY. If the Senator would permit, there are provisions in here to provide that those children that are going to be of school age that are going to need transportation will be provided it in a way that will also permit other children to be involved in it.

This was an accommodation that was worked out with the various school boards, school districts, school teachers, and the disability groups, reviewing the kinds of needs that those within the disability groups had that were attending school.

Mr. HARKIN. I did not hear the response of my distinguished chairman, but these entities are all covered under section 504. That has been in law for 15 years. That law covers school buses right now anyway.

Mr. KENNEDY. And has worked in a satisfactory way.

Mr. BUMPERS. Are public schools exempt? In other words, if there is a school building out here with three flights of stairs, do they have to come into compliance?

Mr. HARKIN. I would reply to the Senator, again, schools are covered under section 504 of the Rehabilitation Act.

Mr. KENNEDY. The schools, as you know, get title I funds and other kinds of Federal funds.

Mr. BUMPERS. They were supposed to have been covered a long time ago under the Rehabilitation Act; is that correct?

Mr. HARKIN. Yes.

Mr. BUMPERS. Have they been?

Mr. KENNEDY. By and large, I think the overwhelming majority have been.

Mr. BUMPERS. I just have two quick questions. Does my colleague by what percentage the Greyhound Corp. says that this bill is going to increase the price of Greyhound bus tickets?

Mr. HARKIN. I would respond to the Senator I do not know the exact amount. What did they say?

Mr. BUMPERS. I understand they say it is going to increase the cost of tickets by as much as 25 percent. That is going to be an incentive for people to take the plane rather than a bus, is it not?

Mr. HARKIN. That is based on what assumption for the cost of the lift?

Mr. BUMPERS. I do not know what their assumptions are. But they say a new bus costs about \$200,000 and that these lifts would cost as much as \$30,000. Then they have to retrofit—not retrofit, but they are going to have to buy a different kind of a restroom to accommodate these folks.

Mr. HARKIN. I would respond to the Senator, I spent over an hour in my office the other day with the president of the Greyhound Corp.

As I said earlier to the Senator from South Carolina, he raised some very grave concerns in my mind about the provision of bus services to small towns and communities. That is why we accepted the amendment offered by the Senator from South Carolina, because I believe that amendment struck a good compromise and a good balance. Again, in this area, we will be reviewing, after 3 years, the study that OTA comes up with.

That study will address, some of the concerns the Senator has raised.

Mr. BUMPERS. How many cities in Iowa are dependent on bus service for transportation? Does the Senator know the answer to that?

Mr. HARKIN. I would say in excess of 200.

Mr. BUMPERS. That would be a good guess. In my State it is about 149.

Mr. HARKIN. I would say in excess of 200. That is why I am very concerned about this.

I point out, in testimony we always hear the price of lifts is between \$30,000 and \$35,000. I do not know if the Senator heard the statement of the Senator from Colorado earlier. Currently there are lifts being installed on buses in Denver, CO, for less than \$12,000. These lifts take out only one seat and take no baggage area whatsoever. So, it really is not a \$30,000 or \$35,000 cost.

I would also reiterate what the Senator from Rhode Island said earlier. When West Germany mandated lifts on their buses, it is amazing what happened. Some entrepreneurs went to work and they developed this lift that only cost \$8,000 or \$9,000. That is the one being used in Denver. It is made in West Germany. West Germany.

I will tell the Senator this and I will stake a lot of money on this bet with the Senator. If we pass this bill we will find businesses out there looking at

4,000 buses that the Greyhound Corp. has, plus a lot of others, it is going to be about 16 years from now when the new buses will be phased in. We can bet our bottom dollar someone is going to be out there, the new technology is going to come along and these new lifts will be cheaper. There is just no one looking for the way now because there is no demand for it.

We all know we can get the lifts for less than \$12,000 installed. I bet my bottom dollar in a couple or 3 years we will get it lower than that.

I think Greyhound was using as a basis their \$30,000 or \$35,000 lifts. I know that is not going to be the case in the future.

Mr. BUMPERS. One further question. I heard this alluded to earlier in the evening and I do not know how it was resolved.

Let us assume that somebody brings an action against a business and they make 20 counts of violations of this act. Let us assume that the judge determines that 19 of those counts are specious, frivolous, and throws them out and finds for the plaintiff on one ground and provides injunctive relief on that one ground.

Is the plaintiff entitled to attorney's fees?

Mr. HARKIN. The best answer I can give the Senator, and I really do not know, I honestly have to say I do not know the answer to that.

But from a legal background, and having practiced in court, as the Senator has, I would say that would be to the court to determine the legal fees, I suspect.

Mr. BUMPERS. Let us assume the court throws out 15 allegations as being specious and finds for the plaintiff on 5. Do you know whether or not that changes anything?

Mr. HARKIN. Well, again maybe those five are the most important. Maybe those cases involve the ones that caused the harm in the first place. Again, I do not know. I have to think this will be left to the court to determine: A, whether or not they should get attorney's fees and, B, how much attorney's fees they should get.

Mr. BUMPERS. I think the Senator is probably right. There is a substantial body of case law that says that if any substantial portion of the complaint is sustained, then they are entitled to attorney's fees.

How about the guy running a hardware store, if he is a defendant? What if the judge throws all 20 allegations out? Is the hardware store owner entitled to attorney's fees?

Mr. HARKIN. Well, again if it is a frivolous lawsuit the hardware store owner could go after them for attorney's fees; if it is a frivolous suit. Obviously, if all 20 are thrown out that almost seems to be a prima facie case, but I do not know. That is up to the court.

Mr. BUMPERS. The Senator from New Mexico and I and a lot of us passed these equal access to Justice

bills here, saying that the businessman whom the Government wrongfully sues ought to be entitled to attorney's fees just like the prevailing plaintiff is entitled to attorney's fees. In the case of the prevailing defendant, the rule is, as I understand it, in the case where all 20 allegations were found to be specious and frivolous, the court still has to find that they were brought in bad faith before the hardware store owner can get attorney's fees. So the standard is quite different for the two. And the businessman is put at a very distinct disadvantage on attorney's fees in those cases.

Mr. HARKIN. I think in the case the Senator is talking about, the Government is on one side of that case. I agree with the Senator on that.

Mr. BUMPERS. I am not talking about a case where the Government brings it. I am talking about where an individual brings it.

Mr. HARKIN. In this case the individual here, a disabled person, my colleague is right, would be able to get attorney's fees. Again, it would be up to the court to decide how much and what was a fair and reasonable amount of attorney's fees that person could receive.

Mr. BUMPERS. I thank the Senator for accommodating me. We may have just muddled up the record worse than it already was.

Mr. HARKIN. I do not believe so. I think the Senator made a good contribution tonight. I think there were some things that needed to be clarified and I think they were clarified, and I appreciated that.

Mr. BUMPERS. I commend the Senator for all the work he has done on this. I know it has been a labor of love for him. He and the Senator from Massachusetts, the chairman, both worked diligently on it and are to be commended.

I must say, I am not torn to the extent that I am not going to vote for the bill. But I am so concerned that I am going to watch the regulations being written very carefully and get my two bits worth in, in the comment period.

Mr. HARKIN. I can assure the Senator that as a member of his Committee on Small Business, I will be right behind him in that endeavor.

Mr. BUMPERS. I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

#### LEGISLATIVE BRANCH APPROPRIATIONS, FISCAL YEAR 1990

The Senate continued consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the clerk will report H.R. 3014.

The legislative clerk read as follows:

A bill (H.R. 3014) making appropriations for the legislative branch for the fiscal year ending September 3, 1990, and for other purposes.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been previously ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Washington [Mr. ADAMS], the Senator from Montana [Mr. BAUCUS], the Senator from Ohio [Mr. GLENN], the Senator from Ohio [Mr. METZENBAUM], the Senator from North Carolina [Mr. SANFORD], and the Senator from Tennessee [Mr. SASSER] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Montana [Mr. BURNS], the Senator from Mississippi [Mr. LOTT], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Delaware [Mr. ROTH] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 81, nays 9, as follows:

[Rollcall Vote No. 172 Leg.]

#### YEAS—81

Bentsen	Fowler	Matsunaga
Biden	Gore	McCain
Bingaman	Gorton	McClure
Bond	Graham	Mikulski
Boren	Gramm	Mitchell
Boschwitz	Gramley	Moynihan
Bradley	Harkin	Nickles
Breaux	Hatch	Nunn
Bryan	Hatfield	Packwood
Bumpers	Hefflin	Pell
Burdick	Heins	Presler
Byrd	Hollings	Pryor
Chafee	Humphrey	Reid
Coats	Inouye	Riegle
Cochran	Jeffords	Robb
Cohen	Johnston	Rockefeller
Cranston	Kassebaum	Rudman
D'Amato	Kasten	Sarbanes
Danforth	Kennedy	Shelby
Daschle	Kerrey	Simon
DeConcini	Kerry	Simpson
Dodd	Kohl	Specter
Dole	Lautenberg	Stevens
Domenici	Leahy	Thurmond
Durenberger	Levin	Warner
Exon	Lieberman	Wilson
Ford	Lugar	Wirth

#### NAYS—9

Armstrong	Garn	McConnell
Conrad	Helms	Symms
Dixon	Mack	Wallop

#### NOT VOTING—10

Adams	Lott	Sanford
Baucus	Metzenbaum	Sasser
Burns	Murkowski	
Glenn	Roth	

So the bill, (H.R. 3014), as amended, was passed.

Mr. REID. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. NICKLES. I move to lay that on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arkansas [Mr. BUMPERS] is recognized.

Mr. REID. Will the Senator yield until we finish a matter on this bill?

Mr. BUMPERS. I will be happy to yield to the Senator from Nevada.